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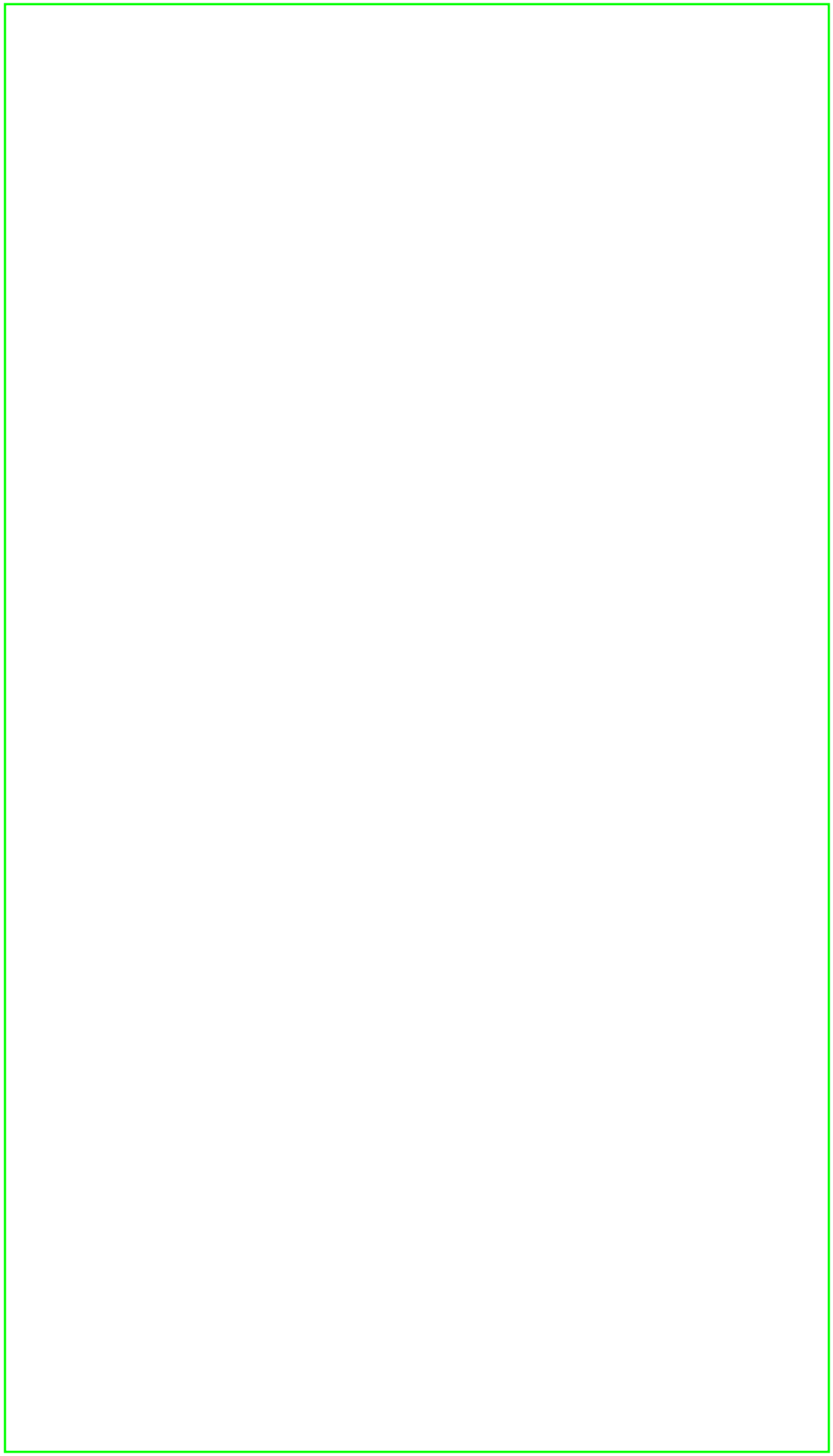

REVISED STATUTES
OF
NEBRASKA

2022 CUMULATIVE SUPPLEMENT

EDITED, ANNOTATED, AND PUBLISHED
BY THE
REVISOR OF STATUTES

VOLUME 2
CHAPTERS 43 - 77, INCLUSIVE

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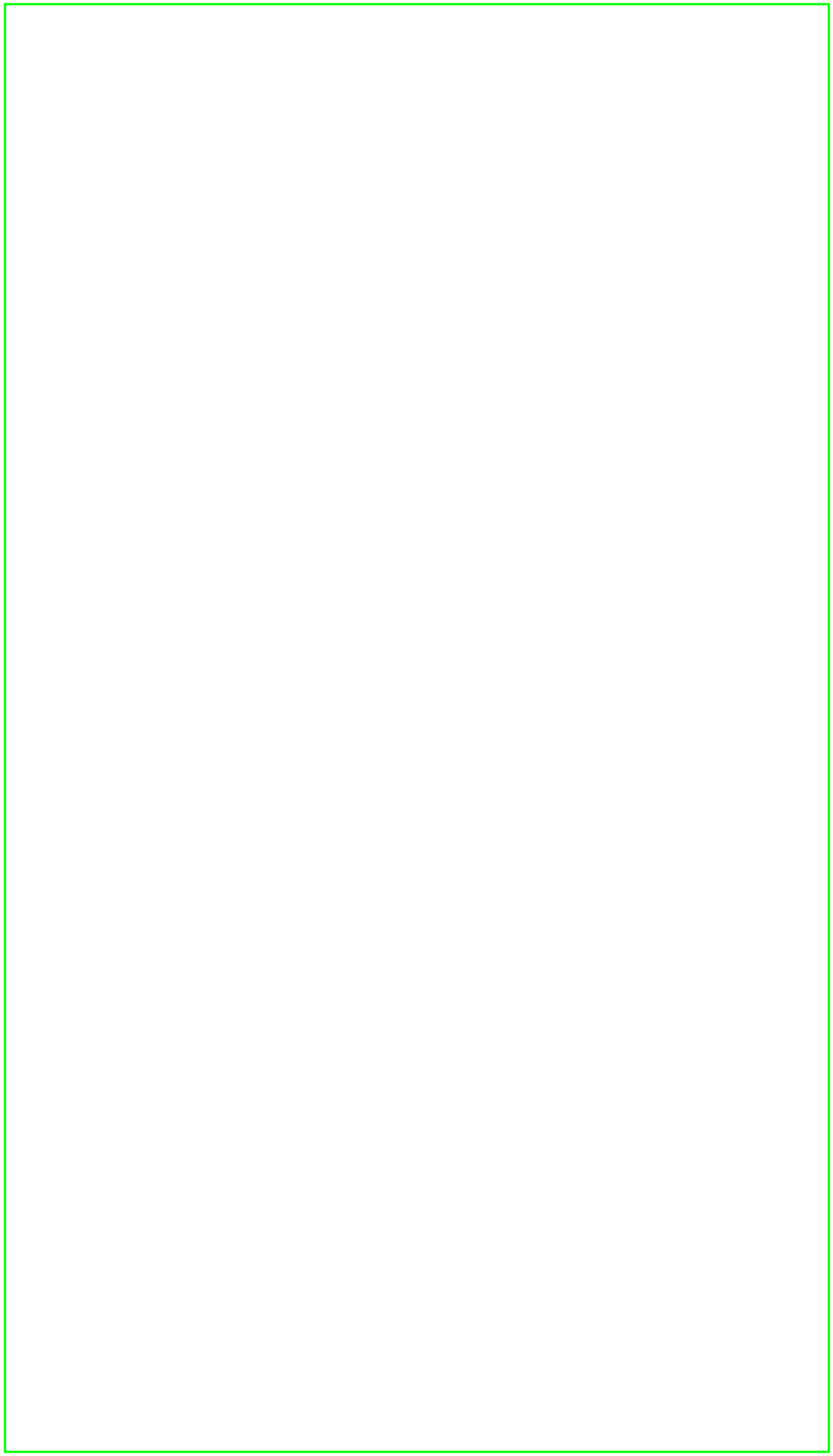

CHAPTER 43
INFANTS AND JUVENILES

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ARTICLE 1
ADOPTION PROCEDURES

(a) GENERAL PROVISIONS

Section
43-101. Children eligible for adoption.
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43-102. Petition requirements; decree; jurisdiction; filings.
43-104. Adoption; consent required; exceptions; petition requirements; private adoption; requirements.

Section

(a) GENERAL PROVISIONS

43-101 Children eligible for adoption.

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, any minor child may be adopted by any adult person or persons and any adult child may be adopted by the spouse of such child's parent in the cases and subject to sections 43-101 to 43-115, except that no person having a spouse may adopt a minor child unless the spouse joins in the petition therefor. If the spouse so joins in the petition therefor, the adoption shall be by them jointly, except that an adult spouse may adopt a child of the other spouse whether born in or out of wedlock.

(2) Any adult child may be adopted by any person or persons subject to sections 43-101 to 43-115, except that no person having a spouse may adopt an adult child unless the spouse joins in the petition therefor. If the spouse so joins the petition therefor, the adoption shall be by them jointly. The adoption of an adult child by another adult or adults who are not the stepparent of the adult child may be permitted if the adult child has had a parent-child relationship with the prospective parent or parents for a period of at least six months next preceding the adult child's age of majority and (a) the adult child has no living parents, (b) the adult child's parent or parents had been deprived of parental rights to such child by the order of any court of competent jurisdiction, (c) the parent or parents, if living, have relinquished the adult child for adoption by a written instrument, (d) the parent or parents had abandoned the child for at least six months next preceding the adult child's age of majority, or (e) the parent or parents are incapable of consenting. The substitute consent provisions of section 43-105 do not apply to adoptions under this subsection.

Source: Laws 1943, c. 104, § 1, p. 349; R.S.1943, § 43-101; Laws 1984, LB 510, § 1; Laws 1985, LB 255, § 17; Laws 1999, LB 594, § 8; Laws 2022, LB741, § 3.
Effective date July 21, 2022.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-101.01 Terms, defined.

For purposes of sections 43-101 to 43-115:

(1) Acknowledged father means an individual who has:

(a) Executed a valid acknowledgment of paternity; or

(b) Acknowledged paternity through establishment of a familial relationship with the child for a period of at least six months;

(2) Adjudicated father means an individual who has been determined by a court of competent jurisdiction, in this state or in another state or territory of the United States, to be the biological or legal father of a minor child; and

(3) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties.

Source: Laws 2022, LB741, § 4.
Effective date July 21, 2022.

43-102 Petition requirements; decree; jurisdiction; filings.

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, any person or persons desiring to adopt a minor child or an adult child shall file a petition for adoption signed and sworn to by the person or persons desiring to adopt. The following shall be filed prior to the hearing required under section 43-103:

(a) The consent or consents required by sections 43-104 and 43-105 or section 43-104.07;

(b) The documents required by section 43-104.07 or the documents required by sections 43-104.08 to 43-104.24;

(c) A completed preplacement adoptive home study if required by section 43-107;

(d) The completed and signed affidavit described in section 43-104.09 if required by such section;

(e) The completed and signed affidavit described in section 43-104.16 if required by such section; and

(f) When a consent is not required under subdivision (4)(c) of section 43-104, a certified copy of the termination order.

(2) The county court of the county in which the person or persons desiring to adopt a child reside has jurisdiction of adoption proceedings, except that if a juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such juvenile court has concurrent jurisdiction with the county court in such adoption proceeding. If a child to be adopted is a ward of any court or a ward of the state at the time of placement and at the time of filing an adoption petition, the person or persons desiring to adopt shall not be required to be residents of Nebraska. The petition and all other court filings for an adoption proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such juvenile court. Such proceeding is considered a county court proceeding even if heard by a juvenile court judge and an order of the juvenile court in such adoption proceeding has the force and effect of a county court order. The testimony in an adoption proceeding heard before a juvenile court judge shall be preserved as in any other juvenile court proceeding.

Source: Laws 1943, c. 104, § 2, p. 349; R.S.1943, § 43-102; Laws 1975, LB 224, § 1; Laws 1983, LB 146, § 1; Laws 1984, LB 510, § 2; Laws 1985, LB 255, § 18; Laws 1993, LB 16, § 1; Laws 1995, LB 712, § 19; Laws 1996, LB 1001, § 1; Laws 1998, LB 1041, § 6; Laws 1999, LB 375, § 2; Laws 1999, LB 594, § 9; Laws 2007, LB247, § 4; Laws 2007, LB296, § 62; Laws 2018, LB193, § 78; Laws 2022, LB741, § 5.
Effective date July 21, 2022.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.
Nebraska Juvenile Code, see section 43-2,129.

43-104 Adoption; consent required; exceptions; petition requirements; private adoption; requirements.

(1) Except as otherwise provided in this section and in the Nebraska Indian Child Welfare Act, no adoption shall be decreed unless written consents thereto are filed in the county court of the county in which the person or persons desiring to adopt reside or in the county court in which the juvenile court having jurisdiction over the custody of the child is located and the written consents are executed by:

(a) The minor child, if over fourteen years of age; and

(b) Both parents of a child born in lawful wedlock if living, the surviving parent of a child born in lawful wedlock, the mother of a child born out of

wedlock, or both the mother and father of a child born out of wedlock as determined pursuant to sections 43-104.08 to 43-104.24.

(2) A written consent or relinquishment for adoption under this section shall not be valid unless signed at least forty-eight hours after the birth of the child.

(3) A petition for adoption shall attest that, at the time of filing:

(a) There were no pending motions in any other court having jurisdiction over the minor child; and

(b) If a juvenile court has jurisdiction over the child, that adoption is the permanency goal in proceedings in juvenile court.

(4) Consent shall not be required of any parent:

(a) Who relinquished the child for adoption by a written instrument;

(b) Who abandoned the child for at least six months next preceding the filing of the adoption petition;

(c) Whose parental rights to such child have been terminated by the order of any court of competent jurisdiction; or

(d) Who is incapable of consenting.

(5) Consent shall not be required of a putative father who has failed to timely file:

(a) A Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02 and, with respect to the absence of such filing, a certificate has been filed pursuant to section 43-104.04; or

(b) A petition pursuant to section 43-104.05 for the adjudication of such father's objection to the adoption and a determination of whether his consent to the adoption is required and the mother of the child has timely executed a valid relinquishment and consent to the adoption pursuant to such section.

(6) Consent shall not be required of an acknowledged or adjudicated father who has failed to timely file a petition pursuant to section 43-104.05 for the adjudication of such notice and a determination of whether his consent to the adoption is required and the mother of the child has timely executed a valid relinquishment and consent to the adoption pursuant to such section.

(7) Consent shall not be required of an acknowledged father, an adjudicated father, or a putative father who is not required to consent to the adoption pursuant to section 43-104.05 or 43-104.22.

(8) The validity of a relinquishment and consent for adoption is not affected by the fact that a relinquishing person is a minor.

(9)(a) In private adoptions not involving relinquishment of a child to the state or to a licensed child placement agency, a parent or parents who relinquish a child for adoption shall be provided legal counsel of their choice independent from that of the adoptive parent or parents. Such counsel shall be provided at the expense of the adoptive parent or parents prior to the execution of a written relinquishment and consent to adoption or execution of a communication and contact agreement under section 43-166, unless specifically waived in writing.

(b) In private adoptions and adoptions involving relinquishment of a child to a licensed child placement agency other than the state, a parent or parents contemplating relinquishment of a child for adoption shall be offered, at the expense of the adoptive parent or parents or the agency, at least three hours of professional counseling prior to executing a written relinquishment of parental

rights or written consent to adoption. Such relinquishment or consent shall state whether the relinquishing parent or parents received or declined counseling.

Source: Laws 1943, c. 104, § 4(1), p. 350; R.S.1943, § 43-104; Laws 1951, c. 127, § 1, p. 546; Laws 1967, c. 248, § 1, p. 652; Laws 1971, LB 329, § 1; Laws 1973, LB 436, § 1; Laws 1975, LB 224, § 2; Laws 1983, LB 146, § 3; Laws 1984, LB 510, § 3; Laws 1985, LB 255, § 20; Laws 1988, LB 790, § 22; Laws 1995, LB 712, § 20; Laws 1996, LB 1296, § 19; Laws 1998, LB 1041, § 7; Laws 1999, LB 594, § 10; Laws 2002, LB 952, § 2; Laws 2003, LB 148, § 100; Laws 2007, LB247, § 5; Laws 2022, LB741, § 6.
Effective date July 21, 2022.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-104.01 Child born out of wedlock; putative father registry; Department of Health and Human Services; duties.

(1) The Department of Health and Human Services shall establish a putative father registry. The department shall maintain such registry and shall record the names and addresses of (a) any person adjudicated by a court of this state or by a court of another state or territory of the United States to be the biological father of a child born out of wedlock if a certified copy of the court order is filed with the registry by such person or any other person, (b) any putative father who has filed with the registry, prior to the receipt of notice under sections 43-104.12 to 43-104.16, a Request for Notification of Intended Adoption with respect to such child, and (c) any putative father who has filed with the registry a Notice of Objection to Adoption and Intent to Obtain Custody with respect to such child.

(2) A Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody filed with the registry shall include (a) the putative father's name, address, and social security number, (b) the name and last-known address of the mother, (c) the month and year of the birth or the expected birth of the child, (d) the case name, court name, and location of any Nebraska court having jurisdiction over the custody of the child, and (e) a statement by the putative father that he acknowledges liability for contribution to the support and education of the child after birth and for contribution to the pregnancy-related medical expenses of the mother of the child. The person filing the notice shall notify the registry of any change of address pursuant to procedures prescribed in rules and regulations of the department.

(3) A request or notice filed under this section or section 43-104.02 shall be admissible in any action for paternity and shall estop the putative father from denying paternity of such child thereafter.

(4) Any putative father who files a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody with the putative father registry may revoke such filing. Upon receipt of such revocation by the registry, the effect shall be as if no filing had ever been made.

(5) The department may develop information about the registry and may distribute such information, through its existing publications, to the news media and the public. The department may provide information about the

registry to the Department of Correctional Services, which may distribute such information through its existing publications.

Source: Laws 1995, LB 712, § 21; Laws 1996, LB 1044, § 105; Laws 1999, LB 594, § 11; Laws 2007, LB247, § 6; Laws 2007, LB296, § 63; Laws 2022, LB741, § 7.
Effective date July 21, 2022.

43-104.02 Child born out of wedlock; Notice of Objection to Adoption and Intent to Obtain Custody; filing requirements.

(1) A Notice of Objection to Adoption and Intent to Obtain Custody shall be filed with the putative father registry under section 43-104.01 on forms provided by the Department of Health and Human Services:

(a) At any time during the pregnancy and no later than ten business days after the birth of the child; or

(b) If the notice required by section 43-104.13 is provided after the birth of the child:

(i) At any time during the pregnancy and no later than ten business days after receipt of the notice provided under section 43-104.12; or

(ii) No later than ten business days after the last date of any published notice provided under section 43-104.14, whichever notice is earlier.

(2) Such notice shall be considered to have been filed if it is received by the Department of Health and Human Services, Office of Vital Records, putative father registry or postmarked prior to the end of the tenth business day as provided in this section.

Source: Laws 1975, LB 224, § 3; Laws 1995, LB 712, § 22; Laws 1996, LB 1044, § 106; Laws 1997, LB 752, § 97; Laws 2007, LB247, § 7; Laws 2007, LB296, § 64; Laws 2014, LB908, § 2; Laws 2022, LB741, § 8.
Effective date July 21, 2022.

43-104.03 Child born out of wedlock; filing with putative father registry; department; notice; to whom given.

Within three days after the filing of a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody with the putative father registry pursuant to sections 43-104.01 and 43-104.02, the Department of Health and Human Services shall cause a certified copy of such request or notice to be mailed by certified mail to the mother or prospective mother of such child at the last-known address shown on the request or notice or an agent specifically designated in writing by the mother or prospective mother to receive such request or notice.

Source: Laws 1975, LB 224, § 4; Laws 1994, LB 1224, § 49; Laws 1995, LB 712, § 23; Laws 1996, LB 1044, § 107; Laws 1999, LB 594, § 12; Laws 2007, LB247, § 8; Laws 2007, LB296, § 65; Laws 2022, LB741, § 9.
Effective date July 21, 2022.

43-104.04 Child born out of wedlock; failure to file notice; effect.

If a Notice of Objection to Adoption and Intent to Obtain Custody is not timely filed with the putative father registry pursuant to section 43-104.02, the

mother of a child born out of wedlock or an agent specifically designated in writing by the mother may request, and the Department of Health and Human Services shall supply, a certificate that no such notice has been filed with the putative father registry. The filing of such certificate pursuant to section 43-102 shall eliminate the need or necessity of a consent or relinquishment for adoption by the putative father of such child.

Source: Laws 1975, LB 224, § 5; Laws 1995, LB 712, § 24; Laws 1996, LB 1044, § 108; Laws 1999, LB 594, § 13; Laws 2007, LB247, § 9; Laws 2007, LB296, § 66; Laws 2022, LB741, § 10.
Effective date July 21, 2022.

43-104.05 Child born out of wedlock; notice; filed; petition for adjudication of paternity; trial; guardian ad litem; court; jurisdiction.

(1)(a) A putative, acknowledged, or adjudicated father objecting to a proposed adoption may file a petition objecting to the adoption and seeking a determination of whether the objecting father's consent to the proposed adoption is required. A putative father may only file such petition if he has timely filed a Notice of Objection to Adoption and Intent to Obtain Custody with the putative father registry pursuant to section 43-104.02.

(b) The petition shall be filed within forty-five days after the later of the child's birth or the objecting father's receipt of notice under sections 43-104.12 to 43-104.14.

(c)(i) Except as provided in subdivision (1)(c)(ii) of this section, the petition shall be filed in the county court in the county where such child was born or, if a juvenile court already has jurisdiction over the custody of the child, in the county court of the county in which such juvenile court is located.

(ii) If the child was not born in Nebraska, the petition shall be filed in the county court of the county where either the biological mother or objecting father resides.

(d) A timely petition objecting to the adoption must be filed by an objecting putative, acknowledged, or adjudicated father of a minor child born out of wedlock who is the subject of a proposed adoption.

(e) Such petition may be filed by and defended by a minor in the minor's own name.

(2) If a petition objecting to a proposed adoption is not filed within the deadline provided in subdivision (1)(b) of this section, and the mother of the child has executed a valid relinquishment and consent to the adoption within ninety days after the later of the birth of the child or the objecting father's receipt of notice under sections 43-104.12 to 43-104.14, the putative, acknowledged, or adjudicated father's consent to adoption of the child shall not be required, he is not entitled to any further notice of the adoption proceedings, his right to object to the adoption shall not be recognized thereafter in any court, and his parental rights to such child will be terminated upon entry of an adoption decree.

(3) After the timely filing of a petition objecting to a proposed adoption, the court shall set a trial date upon proper notice to the parties not less than twenty nor more than thirty days after the date of such filing. If the mother contests the objecting father's claim of paternity, the court shall order DNA testing to establish whether the objecting father is the biological father. The court shall

assess the costs of such testing between the parties in an equitable manner. Whether the objecting father's consent to the adoption is required shall be determined pursuant to section 43-104.22, except that such consent is not required if the objecting father is not the biological father. The court shall appoint a guardian ad litem to represent the best interests of the child.

(4)(a) The county court or juvenile court having jurisdiction over the custody of the child shall have exclusive jurisdiction over proceedings under this section from the date of notice provided under section 43-104.12 or the last date of published notice under section 43-104.14, whichever notice is earlier, until thirty days after the conclusion of proceedings under this section, including appeals, unless such jurisdiction is transferred under subdivision (b) of this subsection.

(b) Except as provided in subdivision (4)(c) of this section, the court shall, upon the motion of any party, transfer the case to the district court for further proceedings on the matters of custody, visitation, and child support with respect to such child if:

(i) Such court determines under section 43-104.22 that the consent of the objecting father is required for adoption of the minor child and the objecting father refuses such consent; or

(ii) The mother of the child, within ninety days after the conclusion of proceedings under this section, including appeals, has not executed a valid relinquishment and consent to the adoption.

(c) The court, upon its own motion, may retain the case for good cause shown.

Source: Laws 1975, LB 224, § 6; Laws 1995, LB 712, § 25; Laws 1998, LB 1041, § 8; Laws 1999, LB 594, § 14; Laws 2007, LB247, § 10; Laws 2022, LB741, § 11.
Effective date July 21, 2022.

43-104.08 Child born out of wedlock; identify and inform biological father.

Whenever a child is claimed to be born out of wedlock and the biological mother contacts an adoption agency or attorney to relinquish her rights to the child, or the biological mother joins in a petition for adoption to be filed by her spouse, the agency or attorney contacted shall attempt to establish the identity of the biological father and further attempt to inform the biological father of his rights, including the right to object to the adoption and the procedure and required timing to object, and his right to execute a relinquishment and consent to adoption, or a denial of paternity and waiver of rights, in the form mandated by section 43-106, pursuant to sections 43-104.08 to 43-104.24.

Source: Laws 1995, LB 712, § 1; Laws 2007, LB247, § 11; Laws 2022, LB741, § 12.
Effective date July 21, 2022.

43-104.09 Child born out of wedlock; biological mother; affidavit; form.

In all cases of adoption of a minor child born out of wedlock, the biological mother, or an individual acting on behalf of the biological mother and who possesses information provided by the biological mother if the biological mother is unavailable due to death, incapacity, abandonment, or termination of parental rights, shall complete and sign an affidavit in writing and under oath.

The affidavit shall be completed and signed before or at the time of execution of the consent or relinquishment and shall be filed with the court prior to the hearing on the petition for adoption. If the biological mother is under the age of nineteen, the biological mother may sign the affidavit despite her minority or the affidavit may be completed and signed by the agency or attorney representing the biological mother based upon information provided by the biological mother. The affidavit shall be in substantially the following form:

AFFIDAVIT OF IDENTIFICATION

I, ... , the mother of a child, state under oath or affirm as follows:

(1) My child was born, or is expected to be born, on the . . . . . day of . . . . . , ... , at . . . . . , in the State of . . . . . .

(2) I reside at . . . . . , in the City or Village of . . . . . , County of . . . . . , State of . . . . . .

(3) I am of the age of . . . . . years, and my date of birth is . . . . . .

(4) I acknowledge that I have been asked to identify the father of my child.

(5) (CHOOSE ONE)

(5A) I know and am identifying the biological father (or possible biological fathers) as follows:

The name of the biological father is . . . . . .

His last-known home address is . . . . . .

His last-known work address is . . . . . .

He is . . . . . years of age, or he is deceased, having died on or about the . . . . . day of . . . . . , ... , at . . . . . , in the State of . . . . . .

He has been adjudicated to be the biological father by the . . . . . Court of . . . . . county, State of . . . . . , case name . . . . . , docket number . . . . . .

He . . . has . . . has not acknowledged paternity in court or in connection with the child's birth certificate.

He . . . has . . . has not established a familial relationship with the child.

(For other possible biological fathers, please use additional sheets of paper as needed.)

(5B) I am unwilling or unable to identify the biological father (or possible biological fathers). I do not wish or I am unable to name the biological father of the child for the following reasons:

. . . . . Conception of my child occurred as a result of sexual assault or incest

. . . . . Providing notice to the biological father of my child would threaten my safety or the safety of my child

. . . . . Other reason: . . . . . .

(6) If the biological mother is unable to name the biological father, the physical description of the biological father (or possible biological fathers) and other information which may assist in identifying him, including the city or county and state where conception occurred:

. . . . . .

. . . . . .

. . . . . .

(use additional sheets of paper as needed).

(7) Under penalty of perjury, the undersigned certifies that the statements set forth in this affidavit are true and correct.

(8) I have read this affidavit and have had the opportunity to review and question it. It was explained to me by . . . . . .

I am signing it as my free and voluntary act and understand the contents and the effect of signing it.

Dated this . . . . . day of . . . . . , ...

(Acknowledgment)

. . . . . .

(Signature)

Source: Laws 1995, LB 712, § 2; Laws 2007, LB247, § 12; Laws 2022, LB741, § 13.
Effective date July 21, 2022.

43-104.12 Child born out of wedlock; agency or attorney; duty to inform biological father.

In order to attempt to inform the biological father or possible biological fathers, whether putative, acknowledged, or adjudicated, of the right to execute a relinquishment and consent to adoption or a denial of paternity and waiver of rights, the agency or attorney representing the biological mother shall notify, by personal service of process or by registered or certified mail, restricted delivery, return receipt requested:

(1) Any acknowledged father or adjudicated father;

(2) Any person who has filed a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to sections 43-104.01 and 43-104.02;

(3) Any person who is recorded on the child's birth certificate as the child's father;

(4) Any person who might be the biological father of the child who was openly living with the child's biological mother within the twelve months prior to the birth of the child;

(5) Any person who has been identified as the biological father or possible biological father of the child by the child's biological mother pursuant to section 43-104.09;

(6) Any person who was married to the child's biological mother within six months prior to the birth of the child and prior to the execution of the relinquishment; and

(7) Any other person who the agency or attorney representing the biological mother may have reason to believe may be the biological father of the child.

Source: Laws 1995, LB 712, § 5; Laws 1999, LB 594, § 16; Laws 2007, LB247, § 13; Laws 2022, LB741, § 14.
Effective date July 21, 2022.

43-104.13 Child born out of wedlock; notice to biological father; contents.

The notice sent by the agency or attorney pursuant to section 43-104.12 shall be served sufficiently in advance of the birth of the child, whenever possible, to allow compliance with subdivision (1)(a) of section 43-104.02 and shall state:

(1) The biological mother's name, the fact that she is pregnant or has given birth to the child, and the expected or actual date of delivery;

(2) That the child has been relinquished by the biological mother, that she intends to execute a relinquishment and consent to adoption, or that the biological mother has joined or plans to join in a petition for adoption to be filed by her spouse;

(3) That the person being notified has been identified as a possible biological father of the child, whether putative, acknowledged, or adjudicated;

(4) That the person being notified may have certain rights with respect to such child if he is in fact the biological father;

(5) That the person being notified has the right to (a) deny paternity, (b) waive any parental rights he may have, (c) relinquish and consent to adoption of the child, (d) file a Notice of Objection to Adoption and Intent to Obtain Custody any time during the pregnancy or as late as ten business days after birth pursuant to section 43-104.02 if he is a putative father, and (e) object to the adoption in court within forty-five days after the later of receipt of notice under this section or the birth of the child if he is an acknowledged or adjudicated father;

(6) That to deny paternity, to waive his parental rights, or to relinquish and consent to the adoption, the person being notified must contact the undersigned agency or attorney representing the biological mother, and that if he wishes to object to the adoption and seek custody of the child he should seek legal counsel from his own attorney immediately; and

(7) That if the person being notified is the biological father and if the child is not relinquished for adoption, he has a duty to contribute to the support and education of the child and to the pregnancy-related expenses of the mother and a right to seek a court order for custody, parenting time, visitation, or other access with the child.

The agency or attorney representing the biological mother may enclose with the notice a document which is an admission or denial of paternity and a waiver of rights by the person being notified, which such person may choose to complete, in the form mandated by section 43-106, and return to the agency or attorney.

Source: Laws 1995, LB 712, § 6; Laws 2007, LB247, § 14; Laws 2007, LB554, § 38; Laws 2022, LB741, § 15.
Effective date July 21, 2022.

43-104.14 Child born out of wedlock; agency or attorney; duty to notify biological father by publication; when.

(1) If the agency or attorney representing the biological mother is unable through reasonable efforts to locate and serve notice on the biological father or possible biological fathers as contemplated in sections 43-104.12 and 43-104.13, the agency or attorney shall notify the biological father or possible biological fathers by publication.

(2) The publication shall be made once a week for three consecutive weeks in a legal newspaper of general circulation in the Nebraska county or county of

another state which is most likely to provide actual notice to the biological father. The publication shall include:

(a) The first name or initials of the father or possible father or the entry ''John Doe, real name unknown'', if applicable;

(b) A description of the father or possible father if his first name is or initials are unknown;

(c) The approximate date of conception of the child and the city and state in which conception occurred, if known;

(d) The date of birth or expected birth of the child;

(e) That he has been identified as the biological father or possible biological father of a child whom the biological mother currently intends to place for adoption and the approximate date that placement will occur;

(f) That he has the right to (i) deny paternity, (ii) waive any parental rights he may have, (iii) relinquish and consent to adoption of the child, (iv) file a Notice of Objection to Adoption and Intent to Obtain Custody any time during the pregnancy or as late as ten business days after birth pursuant to section 43-104.02 if he is a putative father, or (v) object to the adoption in court within forty-five days after the later of receipt of notice under this section or the birth of the child if he is an acknowledged or adjudicated father;

(g) That in order to deny paternity, waive his parental rights, relinquish and consent to the adoption, or receive additional information to determine whether he is the father of the child in question, he must contact the undersigned agency or attorney representing the biological mother; and

(h) That if he wishes to object to the adoption and seek custody of the child, he must seek legal counsel from his own attorney immediately.

Source: Laws 1995, LB 712, § 7; Laws 2007, LB247, § 15; Laws 2022, LB741, § 16.
Effective date July 21, 2022.

43-104.16 Child born out of wedlock; notice requirements; affidavit by agency or attorney.

In all cases involving the adoption of a minor child born out of wedlock, the agency or attorney representing the biological mother shall execute an affidavit stating that due diligence was used to identify and give actual or constructive notice to the biological father or possible biological fathers of the child and stating the methods used to attempt to identify and give actual or constructive notice to those persons or the reason why no attempts were made to identify and notify those persons. The affidavit shall be filed in the adoption proceeding prior to the hearing on the petition for adoption.

Source: Laws 1995, LB 712, § 9; Laws 2022, LB741, § 17.
Effective date July 21, 2022.

43-104.17 Child born out of wedlock; petition; evidence of compliance required; notice to biological father; when.

In all cases of adoption of a minor child born out of wedlock, the petition for adoption shall specifically allege compliance with sections 43-104.08 to 43-104.16, and all documents which are evidence of such compliance shall be filed with the court prior to the hearing on the petition. No notice of the filing

of the petition to finalize or the hearing on the petition shall be given to a biological father or putative biological father who (1) executed a valid relinquishment and consent or a valid denial of paternity and waiver of rights pursuant to section 43-104.11, (2) was a putative father provided notice under sections 43-104.12 to 43-104.14 and who failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02, (3) was a putative, acknowledged, or adjudicated father who failed to timely file a petition objecting to the adoption under section 43-104.05, or (4) is not required to consent to the adoption pursuant to proceedings conducted under section 43-104 or 43-104.22.

Source: Laws 1995, LB 712, § 10; Laws 2007, LB247, § 16; Laws 2022, LB741, § 18.
Effective date July 21, 2022.

43-104.18 Child born out of wedlock; failure to establish compliance with notice requirements; court powers.

If a petition for adoption is filed and fails to establish substantial compliance with sections 43-104.08 to 43-104.16, the court shall receive evidence by affidavit of the facts and circumstances of the biological mother's relationship with the biological father or possible biological fathers at the time of conception of the child and at the time of the biological mother's relinquishment and consent to the adoption of the child, including any evidence that providing notice to a biological father or possible biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest. If, under the facts and circumstances presented, the court finds that the agency or attorney representing the biological mother did not exercise due diligence in complying with sections 43-104.08 to 43-104.16, or if the court finds that there is no credible evidence that providing notice to a biological father or possible biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest, the court shall order the attorney or agency to exercise due diligence in complying with sections 43-104.08 to 43-104.16.

Source: Laws 1995, LB 712, § 11; Laws 2022, LB741, § 19.
Effective date July 21, 2022.

43-104.19 Repealed. Laws 2022, LB741, § 56.

43-104.20 Repealed. Laws 2022, LB741, § 56.

43-104.21 Repealed. Laws 2022, LB741, § 56.

43-104.22 Child born out of wedlock; hearing; paternity of child; father's consent not required; when; determination of custody.

At any hearing to determine the parental rights of an acknowledged father, an adjudicated father, or a putative father of a minor child born out of wedlock and whether such father's consent is required for the adoption of such child, the county court or juvenile court having jurisdiction shall receive evidence with regard to the actual paternity of the child, if contested. The court shall determine that such father's consent is not required for a valid adoption of the child upon a finding of one or more of the following:

(1) The father abandoned or neglected the child after having knowledge of the child's birth;

(2) The father is not a fit, proper, and suitable custodial parent for the child;

(3) The father had knowledge of the child's birth and failed to provide reasonable financial support for the mother or child;

(4) The father abandoned the mother without reasonable cause and with knowledge of the pregnancy;

(5) The father had knowledge of the pregnancy and failed to provide reasonable support for the mother during the pregnancy;

(6) The child was conceived as a result of a nonconsensual sex act or an incestual act;

(7) Notice was provided pursuant to sections 43-104.12 to 43-104.14 and the putative father failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02;

(8) The acknowledged father, adjudicated father, or putative father failed to timely file a petition objecting to the adoption pursuant to section 43-104.05;

(9) The father executed a valid relinquishment or consent to adoption; or

(10) The man whether an acknowledged father, an adjudicated father, or a putative father, is not, in fact, the biological father of the child.

The court shall determine the custody of the child according to the best interest of the child, weighing the superior rights of a biological parent who has been found to be a fit, proper, and suitable parent against any detriment the child would suffer if removed from the custody of persons with whom the child has developed a substantial relationship.

Source: Laws 1995, LB 712, § 15; Laws 1999, LB 594, § 17; Laws 2007, LB247, § 17; Laws 2022, LB741, § 20.
Effective date July 21, 2022.

43-104.23 Child born out of wedlock; decree finalizing adoption without biological father's notification; when; appeal.

(1) The court shall enter a decree finalizing the adoption of the child if, after viewing the evidence submitted to support a petition for adoption, the court determines that:

(a) No biological father can be identified;

(b) No identified father can be notified without likely threat to the safety of the biological mother or the child; or

(c) That there has been due diligence and substantial compliance with sections 43-104.08 to 43-104.16 and that no biological father has timely filed under section 43-104.02 or 43-104.05.

(2) Subject to the disposition of an appeal, upon the expiration of thirty days after a decree is issued under this section, the decree shall not be reversed, vacated, or modified on the basis of fraud, misrepresentation, or failure to provide notice under sections 43-104.12 to 43-104.14.

Source: Laws 1995, LB 712, § 16; Laws 2022, LB741, § 21.
Effective date July 21, 2022.

43-104.25 Repealed. Laws 2022, LB741, § 56.

43-105 Substitute consents.

(1) If consent is not required of both parents of a child born in lawful wedlock if living, the surviving parent of a child born in lawful wedlock, or the mother or mother and father of a child born out of wedlock, because of the provisions of subdivision (1)(b) of section 43-104, substitute consents shall be filed as follows:

(a) Consent to the adoption of a minor child who has been committed to the Department of Health and Human Services may be given by the department or its duly authorized agent in accordance with section 43-906;

(b) When a parent has relinquished a minor child for adoption to any child placement agency licensed or approved by the department or its duly authorized agent, consent to the adoption of such child may be given by such agency; and

(c) When consent cannot be given as provided in section 43-104, consent shall be given by the guardian or guardian ad litem of such minor child appointed by a court, which consent shall be authorized by the court having jurisdiction of such guardian or guardian ad litem.

(2) Substitute consent provisions of this section do not apply to a biological father whose consent is not required under section 43-104.22 or subsection (5) or (6) of section 43-104.

Source: Laws 1943, c. 104, § 4(2), p. 350; R.S.1943, § 43-105; Laws 1967, c. 248, § 2, p. 653; Laws 1988, LB 790, § 23; Laws 1989, LB 22, § 2; Laws 1995, LB 712, § 26; Laws 1996, LB 1044, § 110; Laws 1996, LB 1155, § 8; Laws 1998, LB 1041, § 9; Laws 2007, LB247, § 19; Laws 2022, LB741, § 22.
Effective date July 21, 2022.

Cross References

Terminated parental rights, substitute consents, see section 43-293.

43-106 Relinquishments and consents; signature; witnesses; acknowledgment.

Relinquishments and consents required to be given under sections 43-104 and 43-105 must be acknowledged before an officer authorized to acknowledge deeds in this state and signed in the presence of at least one witness, in addition to the officer.

Source: Laws 1943, c. 104, § 4(3), p. 351; R.S.1943, § 43-106; Laws 1951, c. 128, § 1, p. 547; Laws 1965, c. 233, § 1, p. 678; Laws 2007, LB247, § 20; Laws 2022, LB741, § 23.
Effective date July 21, 2022.

43-108 Personal appearance of parties; exceptions.

The minor child to be adopted, unless such child is over fourteen years of age, and the person or persons desiring to adopt the child must appear in person before the judge at the time of hearing, except that when the petitioners are married and one of them is present in court, the court, in its discretion, may accept the affidavit of an absent spouse who is in the armed forces of the United States and it appears to the court the absent spouse will not be able to

be present in court for more than a year because of his or her military assignment, which affidavit sets forth that the absent spouse favors the adoption.

Source: Laws 1943, c. 104, § 6, p. 351; R.S.1943, § 43-108; Laws 1969, c. 340, § 1, p. 1199; Laws 1998, LB 1041, § 11; Laws 2022, LB741, § 24.
Effective date July 21, 2022.

43-109 Decree; conditions; content.

(1) If, upon the hearing, the court finds that such adoption is for the best interests of such minor child or such adult child, a decree of adoption shall be entered. No decree of adoption shall be entered unless:

(a) It appears that the child has resided with the person or persons petitioning for such adoption for at least six months next preceding the entering of the decree of adoption, except that such residency requirement shall not apply in an adoption of an adult child;

(b) The medical histories required by subsection (2) of section 43-107 have been made a part of the court record;

(c) The court record includes an affidavit or affidavits signed by the relinquishing biological parent, or parents if both are available, in which it is affirmed that, pursuant to section 43-106.02, prior to the relinquishment of the child for adoption, the relinquishing parent was, or parents if both are available were:

(i) Presented a copy or copies of the nonconsent form provided for in section 43-146.06; and

(ii) Given an explanation of the effects of filing or not filing the nonconsent form; and

(d) If the child to be adopted is committed to the Department of Health and Human Services, the document required by subsection (3) of section 43-107 is a part of the court record.

(2) If the adopted child was born out of wedlock, that fact shall not appear in the decree of adoption.

(3) The court may decree such change of name for the adopted child as the petitioner or petitioners may request.

Source: Laws 1943, c. 104, § 7, p. 351; R.S.1943, § 43-109; Laws 1984, LB 510, § 4; Laws 1985, LB 255, § 22; Laws 1988, LB 372, § 2; Laws 1988, LB 301, § 8; Laws 1989, LB 231, § 2; Laws 1999, LB 594, § 19; Laws 2011, LB94, § 2; Laws 2012, LB768, § 2; Laws 2022, LB741, § 25.
Effective date July 21, 2022.

43-111 Decree; effect as to natural parents.

Except as provided in sections 43-101 and 43-106.01 and the Nebraska Indian Child Welfare Act, after a decree of adoption has been entered, the natural parents of the adopted child shall be relieved of all parental duties

toward and all responsibilities for such child and have no rights over such adopted child or to his or her property by descent and distribution.

Source: Laws 1943, c. 104, § 9, p. 352; R.S.1943, § 43-111; Laws 1965, c. 234, § 2, p. 679; Laws 1985, LB 255, § 23; Laws 2022, LB741, § 26.
Effective date July 21, 2022.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-111.01 Denial of petition; court; powers.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, if, upon a hearing, the court shall deny a petition for adoption, the court may take custody of the child involved and determine whether or not it is in the best interests of the child to remain in the custody of the proposed adopting parents. The court may also, on its own motion, appoint a legal guardian over the person and property of such minor and make disposition in the best interests of the child without further notice, relinquishments, or consents as may otherwise be required by sections 43-101.01 to 43-112.

Source: Laws 1965, c. 231, § 1, p. 674; Laws 1971, LB 384, § 1; Laws 1985, LB 255, § 24; Laws 2022, LB741, § 27.
Effective date July 21, 2022.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-112 Decree; appeal.

An appeal shall be allowed from any final order, judgment, or decree, rendered under the authority of sections 43-101 to 43-115, from the county court to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby. The judgment of the Court of Appeals shall not vacate the judgment of the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

Source: Laws 1943, c. 104, § 10, p. 352; R.S.1943, § 43-112; Laws 1981, LB 42, § 22; Laws 1995, LB 538, § 8; Laws 2022, LB741, § 28.
Effective date July 21, 2022.

43-113 Adoption records; access; retention.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, court adoption records may not be inspected by the public and shall be permanently retained as a preservation duplicate in the manner provided in section 84-1208 or in their original form in accordance with the Records Management Act. No person shall have access to such records except that:

(1) Access shall be provided on the order of the judge of the court in which the decree of adoption was entered on good cause shown or as provided in sections 43-138 to 43-140 or 43-146.11 to 43-146.13; or

(2) The clerk of the court shall provide three certified copies of the decree of adoption to the parents who have adopted a child born in a foreign country and not then a citizen of the United States within three days after the decree of adoption is entered. A court order is not necessary to obtain these copies. Certified copies shall only be provided upon payment of applicable fees.

Source: Laws 1943, c. 104, § 11, p. 352; R.S.1943, § 43-113; Laws 1980, LB 992, § 29; Laws 1985, LB 255, § 25; Laws 1988, LB 372, § 4; Laws 1989, LB 229, § 2; Laws 1997, LB 80, § 1; Laws 1998, LB 1041, § 12; Laws 2021, LB355, § 4.

Cross References

Birth certificate, adoptive, see sections 71-626 and 71-627.02.
Nebraska Indian Child Welfare Act, see section 43-1501.
Records Management Act, see section 84-1220.
Report of adoption, court required to file, see section 71-626.

43-115 Prior adoptions.

No adoption heretofore lawfully made shall be affected by the enactment of sections 43-101 to 43-115, but such adoptions shall continue in effect and operation according to the terms thereof.

Source: Laws 1943, c. 104, § 13, p. 352; R.S.1943, § 43-115; Laws 2022, LB741, § 29.
Effective date July 21, 2022.

(c) RELEASE OF INFORMATION

43-146.01 Sections; applicability.

(1) Sections 43-106.02, 43-121, 43-123.01, and 43-146.02 to 43-146.16 shall provide the procedures for gaining access to information concerning an adopted person when a relinquishment or consent for an adoption is given on or after September 1, 1988.

(2) Sections 43-119 to 43-142 shall remain in effect for a relinquishment or consent for an adoption which is given prior to September 1, 1988.

(3) Except as otherwise provided in subsection (2) of section 43-107 and subsection (4) of this section: Sections 43-101 to 43-118, 43-143 to 43-146, 43-146.17, 71-626, 71-626.01, and 71-627.02 shall apply to all adoptions.

(4) Sections 43-143 to 43-146 shall not apply to adopted persons for whom a relinquishment or consent for adoption was given on and after July 20, 2002.

Source: Laws 1988, LB 372, § 6; Laws 1988, LB 301, § 9; Laws 2002, LB 952, § 4; Laws 2011, LB94, § 3; Laws 2012, LB768, § 3; Laws 2022, LB741, § 30.
Effective date July 21, 2022.

(h) WRITTEN COMMUNICATION AND CONTACT AGREEMENTS

43-166 Communication and contact agreement; authorized; adoptee consent, when required; court approval; enforcement; civil action authorized; monetary award not allowed.

(1) The adoptive parent or parents and the parent or parents relinquishing a child for adoption may enter into a written agreement to permit continuing

communication and contact after the placement of an adoptee between the adoptive parent or parents and the relinquishing parent or parents in private or agency adoptions for adoptees not in the custody of the Department of Health and Human Services as provided under this section.

(2) The terms of a communication and contact agreement entered into under this section may include provisions for (a) future contact or communication between the relinquishing parent or parents and the adoptee or the adoptive parent or parents, or both, (b) sharing information about the adoptee, or (c) other matters related to communication or contact agreed to by the parties.

(3) If the adoptee is fourteen years of age or older at the time of placement, a communication and contact agreement under this section shall not be valid unless consented to in writing by the adoptee.

(4) A court may approve a communication and contact agreement entered into under this section by incorporating such agreement by reference and indicating the court's approval of such agreement in the decree of adoption. Enforceability of a communication and contact agreement is not contingent on court approval or its incorporation into the decree of adoption.

(5) Neither the existence of, nor the failure of any party to comply with the terms of, a communication and contact agreement entered into under this section shall be grounds for (a) setting aside an adoption decree, (b) revoking a written relinquishment of parental rights or written consent to adoption, (c) challenging the adoption on the basis of duress or coercion, or (d) challenging the adoption on the basis that the agreement retains some aspect of parental rights by the relinquishing parent or parents.

(6) A communication and contact agreement entered into under this section may be enforced by a civil action. A court in which such civil action is filed may enforce, modify, or terminate a communication and contact agreement entered into under this section if the court finds that (a) enforcing, modifying, or terminating the communication and contact agreement is necessary to serve the best interests of the adoptee, (b) the party seeking to enforce, modify, or terminate the communication and contact agreement participated in, or attempted to participate in, mediation in good faith or participated in other appropriate dispute resolution proceedings in good faith to resolve the dispute prior to filing the petition, and (c) when seeking to modify or terminate the agreement, a material change in circumstances has arisen since the parties entered into the communication and contact agreement that justifies modifying or terminating the agreement.

(7) If the adoption was through an agency, the agency which accepted the relinquishment from the relinquishing parent or parents shall be invited to participate in any mediation or other appropriate dispute resolution proceedings as provided in subsection (6) of this section.

(8) With any communication and contact agreement entered into under this section, the following shall appear on the communication and contact agreement: No adoption shall be set aside due to the failure of the adoptive parent or parents or the relinquishing parent or parents to follow the terms of this agreement or a later order modifying or terminating this agreement. Disagreement between the parties or a subsequent civil action brought to enforce, modify, or terminate this agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child. The court shall not act on a petition to enforce, modify, or terminate this agreement

unless the petitioner has participated in, or attempted to participate in, mediation in good faith or participated in other appropriate dispute resolution proceedings in good faith to resolve the dispute prior to filing the petition.

(9) The court shall not award monetary damages as a result of the filing of a civil action pursuant to subsection (6) of this section.

Source: Laws 2016, LB744, § 1; Laws 2022, LB741, § 31.
Effective date July 21, 2022.

ARTICLE 2

JUVENILE CODE

(b) GENERAL PROVISIONS

(c) LAW ENFORCEMENT PROCEDURES

(d) PREADJUDICATION PROCEDURES

(e) PROSECUTION

(f) ADJUDICATION PROCEDURES

(g) DISPOSITION

(b) GENERAL PROVISIONS

43-245 Terms, defined.

For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Abandonment means a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child;

(2) Age of majority means nineteen years of age;

(3) Alternative to detention means a program or directive that increases supervision of a youth in the community in an effort to ensure the youth attends court and refrains from committing a new law violation. Alternative to detention includes, but is not limited to, electronic monitoring, day and evening reporting centers, house arrest, tracking, family crisis response, and temporary shelter placement. Except for the use of manually controlled delayed egress of not more than thirty seconds, placements that utilize physical construction or hardware to restrain a youth's freedom of movement and ingress and egress from placement are not considered alternatives to detention;

(4) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(5) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

(6) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(7) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(8) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(9) Custodian means a nonparental caretaker having physical custody of the juvenile and includes an appointee described in section 43-294;

(10) Guardian means a person, other than a parent, who has qualified by law as the guardian of a juvenile pursuant to testamentary or court appointment, but excludes a person who is merely a guardian ad litem;

(11) Juvenile means any person under the age of eighteen;

(12) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;

(13) Juvenile detention facility has the same meaning as in section 83-4,125;

(14) Legal custody has the same meaning as in section 43-2922;

(15) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(16) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;

(17) Parent means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition;

(18) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(19) Physical custody has the same meaning as in section 43-2922;

(20) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(21) Restorative justice means practices, programs, or services that emphasize repairing the harm caused to victims and the community by persons who have caused the harm or committed an offense. Restorative justice practices may include, but are not limited to, victim youth conferencing, victim-offender

mediation, youth or community dialogue, panels, circles, and truancy mediation;

(22) Restorative justice facilitator means a qualified individual who has been trained to facilitate restorative justice practices. A qualified individual shall be approved by the referring county attorney, city attorney, or juvenile or county court judge. Factors for approval may include, but are not limited to, an individual's education and training in restorative justice principles and practices; experience in facilitating restorative justice sessions; understanding of the necessity to do no harm to either the victim or the person who harmed the victim; and proven commitment to ethical practices;

(23) Seal a record means that a record shall not be available to the public except upon the order of a court upon good cause shown;

(24) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(25) Staff secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Staff secure juvenile facility does not include any institution operated by the Department of Correctional Services;

(26) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02;

(27) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction; and

(28) Young adult means an individual older than eighteen years of age but under twenty-one years of age.

Source: Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91; Laws 2009, LB63, § 28; Laws 2010, LB800, § 12; Laws 2013, LB561, § 6; Laws 2014, LB464, § 7; Laws 2014, LB908, § 3; Laws 2015, LB265, § 2; Laws 2016, LB894, § 1; Laws 2019, LB595, § 23.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-246 Code, how construed.

Acknowledging the responsibility of the juvenile court to act to preserve the public peace and security, the Nebraska Juvenile Code shall be construed to effectuate the following:

(1) To assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest;

(2) To provide for the intervention of the juvenile court in the interest of any juvenile who is within the provisions of the Nebraska Juvenile Code, with due regard to parental rights and capacities and the availability of nonjudicial resources;

(3) To remove juveniles who are within the Nebraska Juvenile Code from the criminal justice system whenever possible and to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families;

(4) To offer selected juveniles the opportunity to take direct personal responsibility for their individual actions by reconciling with the victims, or victim surrogates when appropriate, through restorative justice practices and fulfilling the terms of the resulting reparation plan which may require apologies, restitution, community service, or other agreed-upon means of making amends;

(5) To achieve the purposes of subdivisions (1) through (3) of this section in the juvenile's own home whenever possible, separating the juvenile from his or her parent when necessary for his or her welfare, the juvenile's health and safety being of paramount concern, or in the interest of public safety and, when temporary separation is necessary, to consider the developmental needs of the individual juvenile in all placements, to consider relatives as a preferred potential placement resource, and to make reasonable efforts to preserve and reunify the family if required under section 43-283.01;

(6) To promote adoption, guardianship, or other permanent arrangements for children in the custody of the Department of Health and Human Services who are unable to return home;

(7) To provide a judicial procedure through which these purposes and goals are accomplished and enforced in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

(8) To assure compliance, in cases involving Indian children, with the Nebraska Indian Child Welfare Act; and

(9) To make any temporary placement of a juvenile in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 2; Laws 1982, LB 787, § 1; Laws 1985, LB 255, § 31; Laws 1985, LB 447, § 12; Laws 1996, LB 1001, § 2; Laws 1998, LB 1041, § 21; Laws 1998, LB 1073, § 12; Laws 2010, LB800, § 13; Laws 2019, LB595, § 24.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-246.02 Transfer of jurisdiction to district court; bridge order; criteria; records; modification.

(1) A juvenile court may terminate its jurisdiction under subdivision (3)(a) of section 43-247 by transferring jurisdiction over the juvenile's custody, physical care, and visitation to the district court through a bridge order, if all of the following criteria are met:

(a) The juvenile has been adjudicated under subdivision (3)(a) of section 43-247 in an active juvenile court case and a dispositional order in that case is in place;

(b) Paternity of the juvenile has been legally established, including by operation of law due to an individual's marriage to the mother at the time of conception, birth, or at any time during the period between conception and birth of the child; by operation of law pursuant to section 43-1409; by order of a court of competent jurisdiction; or by administrative order when authorized by law;

(c) The juvenile has been safely placed by the juvenile court with a legal parent; and

(d) The juvenile court has determined that its jurisdiction under subdivision (3)(a) of section 43-247 should properly end once orders for custody, physical care, and visitation are entered by the district court.

(2) When the criteria in subsection (1) of this section are met, a legal parent or guardian ad litem to a juvenile adjudicated under subdivision (3)(a) of section 43-247 in juvenile court may file a motion with the juvenile court for a bridge order under subsection (3) of this section. The parent is not required to intervene in the action. The motion shall be set for evidentiary hearing by the juvenile court no less than thirty days or more than ninety days from the date of the filing of the motion. The juvenile court, on its own motion, may also set an evidentiary hearing on the issue of a bridge order if such hearing is set no less than thirty days from the date of notice to the parties. The court may waive the evidentiary hearing if all issues raised in the motion for a bridge order are resolved by agreement of all parties and entry of a stipulated order.

(3) A motion for a bridge order shall:

(a) Allege that the juvenile court action filed under subdivision (3)(a) of section 43-247 may safely be closed once orders for custody, physical care, and visitation have been entered by the district court;

(b) State the relief sought by the petitioning legal parent or guardian ad litem;

(c) Disclose any other action or proceedings affecting custody of the juvenile, including proceedings related to domestic violence, protection orders, terminations of parental rights, and adoptions, including the docket number, court, county, and state of any such proceeding;

(d) State the names and addresses of any persons other than the legal parents who have a court order for physical custody or claim to have custody or visitation rights with the juvenile; and

(e) Name as a respondent any other person who has any relation to the controversy.

(4) A juvenile court shall designate the petitioner and respondent for purposes of a bridge order. A bridge order shall only address matters of legal and physical custody and parenting time. All other matters, including child support, shall be resolved by filing a separate petition or motion or by action of the child support enforcement office and shall be subject to existing applicable statutory provisions. No mediation or specialized alternative dispute resolution under section 42-364 shall be required in either district court or juvenile court where the juvenile has entered a bridge order. The Parenting Act shall not apply to the entry of the bridge order in juvenile or district court.

(5) When necessary and feasible, the juvenile court shall obtain child custody determinations from foreign jurisdictions pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act.

(6) Upon transferring jurisdiction from a juvenile court to a district court, the clerk of the district court shall docket the case under either a new docket or any previous docket establishing custody or paternity of a child. The transfer of jurisdiction shall not result in new filing fees and other court costs being assessed against the parties.

(7) The district court shall give full force and effect to the juvenile court bridge order as to custody and parenting time and shall not modify the juvenile court bridge order without modification proceedings as provided in subsection (9) of this section.

(8) A district court shall take judicial notice of the juvenile court pleadings and orders in any hearing held subsequent to transfer. Records contained in the district court case file that were copied or transferred from the juvenile court file concerning the case shall be subject to section 43-2,108 and other confidentiality provisions of the Nebraska Juvenile Code, and such records shall only be disclosed, upon request, to the child support enforcement office without a court order.

(9) Following the issuance of a bridge order, a party may file a petition in district court for modification of the bridge order as to legal and physical custody or parenting time. If the petition for modification is filed within one year after the filing date of the bridge order, the party requesting modification shall not be required to demonstrate a substantial change of circumstance but instead shall demonstrate that such modification is in the best interests of the child. If a petition for modification is filed within one year after the filing date of the bridge order, filing fees and other court costs shall not be assessed against the parties.

(10) Nothing in this section shall be construed to require appointment of counsel for the parties in the district court action.

(11) Nothing in this section shall be construed to interfere with the jurisdictional provisions of section 25-2740.

Source: Laws 2017, LB180, § 1; Laws 2018, LB708, § 1.

Cross References

Parenting Act, see section 43-2920.
Uniform Child Custody Jurisdiction and Enforcement Act, see section 43-1226.

43-247.02 Juvenile court; placement or commitment of juveniles; Department of Health and Human Services; Office of Juvenile Services; authority and duties.

(1) Notwithstanding any other provision of Nebraska law, on and after October 1, 2013, a juvenile court shall not:

(a) Place any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 with the Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) or (3) of this section;

(b) Commit any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 to the care and custody of the

Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) or (3) of this section;

(c) Require the Department of Health and Human Services or the Office of Juvenile Services to supervise any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, other than as allowed under subsection (2) or (3) of this section; or

(d) Require the Department of Health and Human Services or the Office of Juvenile Services to provide, arrange for, or pay for any services for any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, or for any party to cases under those subdivisions, other than as allowed under subsection (2) or (3) of this section.

(2) Notwithstanding any other provision of Nebraska law, on and after July 1, 2013, a juvenile court shall not commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center except as part of an order of intensive supervised probation under subsection (1) of section 43-286.

(3) Nothing in this section shall be construed to limit the authority or duties of the Department of Health and Human Services in relation to juveniles adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247 who were committed to the care and custody of the Department of Health and Human Services prior to October 1, 2013, to the Office of Juvenile Services for community-based services prior to October 1, 2013, or to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center prior to July 1, 2013. The care and custody of such juveniles with the Department of Health and Human Services or the Office of Juvenile Services shall continue in accordance with the Nebraska Juvenile Code and the Juvenile Services Act as such acts existed on January 1, 2013, until:

(a) The juvenile reaches the age of majority;

(b) The juvenile is no longer under the care and custody of the department pursuant to a court order or for any other reason, a guardian other than the department is appointed for the juvenile, or the juvenile is adopted;

(c) The juvenile is discharged pursuant to section 43-412, as such section existed on January 1, 2013; or

(d) A juvenile court terminates its jurisdiction of the juvenile.

Source: Laws 2013, LB561, § 8; Laws 2020, LB1148, § 9.

Cross References

Juvenile Services Act, see section 43-2401.

43-247.03 Restorative justice practices; confidential; privileged communications.

(1) In any juvenile case, the court may provide the parties the opportunity to address issues involving the child's care and placement, services to the family, and other concerns through restorative justice practices. Restorative justice practices may include, but are not limited to, prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, juvenile victim-offender dialogue, victim youth conferencing, victim-offender mediation, youth or community dialogue, panels, circles, and truancy mediation. The Office of Dispute Resolution shall be responsible

for funding and management for such services provided by approved centers. All discussions taking place during such restorative justice practices, including plea negotiations, shall be confidential and privileged communications as provided in section 25-2914.01.

(2) For purposes of this section:

(a) Expedited family group conference means an expedited and limited-scope facilitated planning meeting which engages a child's or juvenile's parents, the child or juvenile when appropriate, other critical family members, services providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to address immediate placement issues for the child or juvenile;

(b) Family group conference means a facilitated meeting involving a child's or juvenile's family, the child or juvenile when appropriate, available extended family members from across the United States, other significant and close persons to the family, service providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to develop a family-centered plan for the best interests of the child and to address the essential issues of safety, permanency, and well-being of the child;

(c) Juvenile victim-offender dialogue means a court-connected process in which a facilitator meets with the juvenile offender and the victim in an effort to convene a dialogue in which the offender takes responsibility for his or her actions and the victim is able to address the offender and request an apology and restitution, with the goal of creating an agreed-upon written plan;

(d) Prehearing conference means a facilitated meeting prior to appearing in court and held to gain the cooperation of the parties, to offer services and treatment, and to develop a problem-solving atmosphere in the best interests of children involved in the juvenile court system. A prehearing conference may be scheduled at any time during the child welfare or juvenile court process, from initial removal through permanency, termination of parental rights, and juvenile delinquency court processes; and

(e) Victim youth conferencing means a process in which a restorative justice facilitator meets with the juvenile and the victim, when appropriate, in an effort to convene a dialogue in which the juvenile takes responsibility for his or her actions and the victim or victim surrogate is able to address the juvenile and create a reparation plan agreement, which may include apologies, restitution, community services, or other agreed-upon means of amends.

Source: Laws 2008, LB1014, § 38; R.S.1943, (2008), § 43-247.01; Laws 2014, LB464, § 10; Laws 2019, LB595, § 25.

43-247.04 Legislative intent; State Court Administrator; duties; Department of Health and Human Services; duties.

(1) It is the intent of the Legislature to transfer four hundred fifty thousand dollars in General Funds from the Department of Health and Human Services' 2014-15 budget to the office of the State Court Administrator's budget for the purpose of making the State Court Administrator directly responsible for contracting and paying for court-connected prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights pre-

hearing conferences, victim youth conferencing, juvenile victim-offender dialogue, and other restorative justice practices. Such funds shall be transferred on or before October 15, 2014.

(2) The Department of Health and Human Services shall continue to be responsible for contracting with mediation centers approved by the Office of Dispute Resolution to provide family group conferences, mediation, and related services for non-court-involved and voluntary child welfare or juvenile cases through June 30, 2017, unless extended by the Legislature.

Source: Laws 2014, LB464, § 11; Laws 2019, LB595, § 26.

(c) LAW ENFORCEMENT PROCEDURES

43-248 Temporary custody of juvenile without warrant; when.

A peace officer may take a juvenile into temporary custody without a warrant or order of the court and proceed as provided in section 43-250 when:

(1) A juvenile has violated a state law or municipal ordinance and such juvenile was eleven years of age or older at the time of the violation, and the officer has reasonable grounds to believe such juvenile committed such violation and was eleven years of age or older at the time of the violation;

(2) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection;

(3) The officer believes the juvenile to be mentally ill and dangerous as defined in section 71-908 and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court;

(4) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian;

(5) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger;

(6) The officer has reasonable grounds to believe the juvenile is truant from school;

(7) The officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under subsection (5) of section 28-801; or

(8) A juvenile has committed an act or engaged in behavior described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and such juvenile was under eleven years of age at the time of such act or behavior, and the officer has reasonable cause to believe such juvenile committed such act or engaged in such behavior and was under eleven years of age at such time.

Source: Laws 1981, LB 346, § 4; Laws 1997, LB 622, § 64; Laws 2004, LB 1083, § 93; Laws 2010, LB800, § 14; Laws 2013, LB255, § 10; Laws 2016, LB894, § 3; Laws 2018, LB670, § 1.

43-250 Temporary custody; disposition; custody requirements.

(1) A peace officer who takes a juvenile into temporary custody under section 29-401 or subdivision (1), (4), (5), or (8) of section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(a) The peace officer may release a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (8) of section 43-248;

(b) The peace officer may require a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (4) of section 43-248 to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in the written notice prepared in triplicate by the peace officer or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney or city attorney and, when required by the court, also file a copy of the notice with the court or the officer appointed by the court for such purpose; or

(c) The peace officer may retain temporary custody of a juvenile taken into temporary custody under section 29-401 or subdivision (1), (4), or (5) of section 43-248 and deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in detention or an alternative to detention and securing placement in such setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(i) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(ii) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all

times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(iv) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(v) If, within the time limits specified in subdivision (1)(c)(i) or (1)(c)(ii) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(vi) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. Until January 1, 2013, a status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(vii) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance.

(2) When a juvenile is taken into temporary custody pursuant to subdivision (2), (7), or (8) of section 43-248, and not released under subdivision (1)(a) of this section, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

(3) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subsection (2) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody pursuant to subdivision (3) of section 43-248 shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting

such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

(4) When a juvenile is taken into temporary custody pursuant to subdivision (6) of section 43-248, the peace officer shall deliver the juvenile to the enrolled school of such juvenile.

(5) A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile had been taken into custody and was released.

(6) In determining the appropriate temporary placement or alternative to detention of a juvenile under this section, the peace officer shall select the placement or alternative which is least restrictive of the juvenile's freedom so long as such placement or alternative is compatible with the best interests of the juvenile and the safety of the community. Any alternative to detention shall cause the least restriction of the juvenile's freedom of movement consistent with the best interest of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 6; Laws 1982, LB 787, § 4; Laws 1985, LB 447, § 14; Laws 1988, LB 790, § 24; Laws 1996, LB 1044, § 128; Laws 1997, LB 622, § 65; Laws 1998, LB 1073, § 13; Laws 2000, LB 1167, § 12; Laws 2001, LB 451, § 5; Laws 2003, LB 43, § 12; Laws 2004, LB 1083, § 94; Laws 2009, LB63, § 29; Laws 2010, LB771, § 18; Laws 2010, LB800, § 15; Laws 2013, LB255, § 11; Laws 2015, LB294, § 15; Laws 2016, LB894, § 5; Laws 2018, LB670, § 2.

43-251.01 Juveniles; placements and commitments; restrictions.

All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

(1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;

(2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

(3) A juvenile who is found to be a juvenile as described in subdivision (1), (2), or (4) of section 43-247 shall not be assigned or transferred to an adult correctional facility or the secure youth confinement facility operated by the Department of Correctional Services;

(4) A juvenile under the age of fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center;

(5)(a) Before July 1, 2019, a juvenile shall not be detained in secure detention or placed at a youth rehabilitation and treatment center unless detention or

placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court; and

(b) On and after July 1, 2019:

(i) A juvenile shall not be detained unless the physical safety of persons in the community would be seriously threatened or detention is necessary to secure the presence of the juvenile at the next hearing, as evidenced by a demonstrable record of willful failure to appear at a scheduled court hearing within the last twelve months;

(ii) A child twelve years of age or younger shall not be placed in detention under any circumstances; and

(iii) A juvenile shall not be placed into detention:

(A) To allow a parent or guardian to avoid his or her legal responsibility;

(B) To punish, treat, or rehabilitate such juvenile;

(C) To permit more convenient administrative access to such juvenile;

(D) To facilitate further interrogation or investigation; or

(E) Due to a lack of more appropriate facilities except in case of an emergency as provided in section 43-430;

(6) A juvenile alleged to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in a juvenile detention facility, including a wing labeled as staff secure at such facility, unless the designated staff secure portion of the facility fully complies with subdivision (5) of section 83-4,125 and the ingress and egress to the facility are restricted solely through staff supervision; and

(7) A juvenile alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall not be placed out of his or her home as a dispositional order of the court unless:

(a) All available community-based resources have been exhausted to assist the juvenile and his or her family; and

(b) Maintaining the juvenile in the home presents a significant risk of harm to the juvenile or community.

Source: Laws 1998, LB 1073, § 25; Laws 2012, LB972, § 1; Laws 2013, LB561, § 10; Laws 2015, LB482, § 1; Laws 2016, LB894, § 6; Laws 2018, LB670, § 3; Laws 2020, LB1140, § 3.

43-251.02 Reference to clinically credentialed community-based provider.

A peace officer, upon making contact with a child who is in need of assistance, may refer the child and child's parent or parents or guardian to a clinically credentialed community-based provider for immediate crisis intervention, de-escalation, and respite care services.

Source: Laws 2015, LB482, § 2; Laws 2018, LB670, § 4.

(d) PREADJUDICATION PROCEDURES

43-253 Temporary custody; investigation; release; when.

(1) Upon delivery to the probation officer of a juvenile who has been taken into temporary custody under section 29-401, 43-248, or 43-250, the probation

officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody. Such investigation may be by informal means when appropriate.

(2) The probation officer's decision to release the juvenile from custody or place the juvenile in detention or an alternative to detention shall be based upon the results of the standardized juvenile detention screening instrument described in section 43-260.01.

(3) No juvenile who has been taken into temporary custody under subdivision (1)(c) of section 43-250 or subsection (6) of section 43-286.01 or pursuant to an alleged violation of an order for conditional release shall be detained in any detention facility or be subject to an alternative to detention infringing upon the juvenile's liberty interest for longer than twenty-four hours, excluding nonjudicial days, after having been taken into custody unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention, services, or supervision is necessary. The juvenile shall be represented by counsel at the hearing. Whether such counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of section 43-272. If continued secure detention is ordered, such detention shall be in a juvenile detention facility, except that a juvenile charged with a felony as an adult in county or district court may be held in an adult jail as set forth in subdivision (1)(c)(v) of section 43-250. A juvenile placed in an alternative to detention, but not in detention, may waive this hearing through counsel.

(4) When the probation officer deems it to be in the best interests of the juvenile, the probation officer shall immediately release such juvenile to the custody of his or her parent. If the juvenile has both a custodial and a noncustodial parent and the probation officer deems that release of the juvenile to the custodial parent is not in the best interests of the juvenile, the probation officer shall, if it is deemed to be in the best interests of the juvenile, attempt to contact the noncustodial parent, if any, of the juvenile and to release the juvenile to such noncustodial parent. If such release is not possible or not deemed to be in the best interests of the juvenile, the probation officer may release the juvenile to the custody of a legal guardian, a responsible relative, or another responsible person.

(5) The court may admit such juvenile to bail by bond in such amount and on such conditions and security as the court, in its sole discretion, shall determine, or the court may proceed as provided in section 43-254. In no case shall the court or probation officer release such juvenile if it appears that:

(a) Before July 1, 2019, further detention or placement of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court; and

(b) On or after July 1, 2019, the physical safety of persons in the community would be seriously threatened or that detention is necessary to secure the presence of the juvenile at the next hearing, as evidenced by a demonstrable record of willful failure to appear at a scheduled court hearing within the last twelve months.

Source: Laws 1981, LB 346, § 9; Laws 1982, LB 787, § 6; Laws 1994, LB 451, § 2; Laws 1998, LB 1073, § 15; Laws 2000, LB 1167, § 15; Laws 2001, LB 451, § 6; Laws 2010, LB800, § 16; Laws 2016, LB894, § 7; Laws 2017, LB8, § 1; Laws 2018, LB670, § 5.

Cross References

Clerk magistrate, authority to determine temporary custody of juvenile, see section 24-519.

43-254 Placement or detention pending adjudication; restrictions; assessment of costs.

Pending the adjudication of any case, and subject to subdivision (5) of section 43-251.01, if it appears that the need for placement or further detention exists, the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for secure detention, except that beginning October 1, 2013, no juvenile alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed in the care and custody or under the supervision of the Department of Health and Human Services, or (6) beginning October 1, 2013, offered supervision options as determined pursuant to section 43-260.01, through the Office of Probation Administration as ordered by the court and agreed to in writing by the parties, if the juvenile is alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and it does not appear that there is any need for secure detention. The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (2) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under section 43-283.01.

Source: Laws 1981, LB 346, § 10; Laws 1985, LB 447, § 16; Laws 1987, LB 635, § 1; Laws 1987, LB 638, § 2; Laws 1996, LB 1044, § 129; Laws 1998, LB 1041, § 23; Laws 2000, LB 1167, § 16; Laws 2010, LB800, § 17; Laws 2013, LB561, § 11; Laws 2017, LB289, § 16.

43-260.01 Detention; factors.

The need for preadjudication placement, services, or supervision and the need for detention of a juvenile and whether detention or an alternative to detention is indicated shall be subject to subdivision (5) of section 43-251.01 and shall be determined as follows:

(1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;

(2) If the results indicate that detention is not required, the juvenile shall be released without restriction or released to an alternative to detention; and

(3) If the results indicate that detention is required, detention shall be pursued.

Source: Laws 2000, LB 1167, § 14; Laws 2013, LB561, § 13; Laws 2016, LB894, § 11; Laws 2018, LB670, § 6.

43-260.04 Juvenile pretrial diversion program; requirements.

A juvenile pretrial diversion program shall:

(1) Be an option available for the county attorney or city attorney based upon his or her determination under this subdivision. The county attorney or city attorney may use the following information:

(a) The juvenile's age;

(b) The nature of the offense and role of the juvenile in the offense;

(c) The number and nature of previous offenses involving the juvenile;

(d) The dangerousness or threat posed by the juvenile to persons or property; or

(e) The recommendations of the referring agency, victim, and advocates for the juvenile;

(2) Permit participation by a juvenile only on a voluntary basis and shall include a juvenile diversion agreement described in section 43-260.06;

(3) Allow the juvenile to consult with counsel prior to a decision to participate in the program;

(4) Be offered to the juvenile when practicable prior to the filing of a juvenile petition or a criminal charge but after the arrest of the juvenile or issuance of a citation to the juvenile if after the arrest or citation a decision has been made by the county attorney or city attorney that the offense will support the filing of a juvenile petition or criminal charges;

(5) Provide screening services for use in creating a diversion plan utilizing appropriate services for the juvenile;

(6) Result in dismissal of the juvenile petition or criminal charges if the juvenile successfully completes the program;

(7) Be designed and operated to further the goals stated in section 43-260.03 and comply with sections 43-260.04 to 43-260.07;

(8) Require information received by the program regarding the juvenile to remain confidential unless a release of information is signed upon admission to the program or is otherwise authorized by law; and

(9)(a) Respond to a public inquiry in the same manner as if there were no information or records concerning participation in the diversion program. Information or records pertaining to participation in the diversion program shall not be disseminated to any person other than:

(i) A criminal justice agency as defined in section 29-3509;

(ii) The individual who is the subject of the record or any persons authorized by such individual; or

(iii) Other persons or agencies authorized by law.

(b) An individual, a person, or an agency requesting information subject to subdivision (9)(a) of this section shall provide the diversion program with satisfactory verification of his, her, or its identity.

Source: Laws 2003, LB 43, § 3; Laws 2013, LB561, § 14; Laws 2019, LB354, § 1.

43-260.06 Juvenile diversion agreement; contents.

A juvenile diversion agreement shall include, but not be limited to, one or more of the following:

(1) A letter of apology;

(2) Community service, not to be performed during school hours if the juvenile offender is attending school;

(3) Restitution;

(4) Attendance at educational or informational sessions at a community agency;

(5) Requirements to remain during specified hours at home, school, and work and restrictions on leaving or entering specified geographical areas; and

(6) Participation in an appropriate restorative justice practice or service.

Source: Laws 2003, LB 43, § 5; Laws 2019, LB595, § 27.

43-261.01 Juvenile court petition; felony or crime of domestic violence; court provide explanation of firearm possession consequences.

(1) When the petition alleges the juvenile committed an act which would constitute a felony or an act which would constitute a misdemeanor crime of domestic violence, the court shall explain the specific legal consequences that an adjudication for such an act will have on the juvenile's right to possess a firearm. The court shall provide such explanation at the earlier of:

(a) The juvenile's first court appearance or, if the juvenile is not present in the court at the time of the first appearance, by written notice sent by regular mail to the juvenile's last-known address; or

(b) Prior to adjudication.

(2) For purposes of this section:

(a) Firearm has the same meaning as in section 28-1201; and

(b) Misdemeanor crime of domestic violence has the same meaning as in section 28-1206.

Source: Laws 2018, LB990, § 6.

43-272 Right to counsel; appointment; payment; guardian ad litem; appointment; when; duties; standards for guardians ad litem; standards for attorneys who practice in juvenile court.

(1)(a) In counties having a population of less than one hundred fifty thousand inhabitants:

(i) When any juvenile court petition is filed alleging jurisdiction of a juvenile pursuant to subdivision (2) of section 43-247, counsel shall be appointed for such juvenile; and

(ii) In any other instance in which a juvenile is brought without counsel before a juvenile court, the court shall advise such juvenile and his or her

parent or guardian of their right to retain counsel and shall inquire of such juvenile and his or her parent or guardian as to whether they desire to retain counsel.

(b) In counties having a population of one hundred fifty thousand or more inhabitants, when any juvenile court petition is filed alleging jurisdiction of a juvenile pursuant to subdivision (1), (2), (3)(b), or (4) of section 43-247, counsel shall be appointed for such juvenile.

(c) The court shall inform any juvenile described in this subsection and his or her parent or guardian of such juvenile's right to counsel at county expense if none of them is able to afford counsel. If the juvenile or his or her parent or guardian desires to have counsel appointed for such juvenile, or the parent or guardian of such juvenile cannot be located, and the court ascertains that none of such persons are able to afford an attorney, the court shall forthwith appoint an attorney to represent such juvenile for all proceedings before the juvenile court, except that if an attorney is appointed to represent such juvenile and the court later determines that a parent of such juvenile is able to afford an attorney, the court shall order such parent or juvenile to pay for services of the attorney to be collected in the same manner as provided by section 43-290. If the parent willfully refuses to pay any such sum, the court may commit him or her for contempt, and execution may issue at the request of the appointed attorney or the county attorney or by the court without a request.

(2) The court, on its own motion or upon application of a party to the proceedings, shall appoint a guardian ad litem for the juvenile: (a) If the juvenile has no parent or guardian of his or her person or if the parent or guardian of the juvenile cannot be located or cannot be brought before the court; (b) if the parent or guardian of the juvenile is excused from participation in all or any part of the proceedings; (c) if the parent is a juvenile or an incompetent; (d) if the parent is indifferent to the interests of the juvenile; or (e) in any proceeding pursuant to the provisions of subdivision (3)(a) of section 43-247.

A guardian ad litem shall have the duty to protect the interests of the juvenile for whom he or she has been appointed guardian, and shall be deemed a parent of the juvenile as to those proceedings with respect to which his or her guardianship extends.

(3) The court shall appoint an attorney as guardian ad litem. A guardian ad litem shall act as his or her own counsel and as counsel for the juvenile, unless there are special reasons in a particular case why the guardian ad litem or the juvenile or both should have separate counsel. In such cases the guardian ad litem shall have the right to counsel, except that the guardian ad litem shall be entitled to appointed counsel without regard to his or her financial ability to retain counsel. Whether such appointed counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of this section.

(4) By July 1, 2015, the Supreme Court shall provide by court rule standards for guardians ad litem for juveniles in juvenile court proceedings.

(5) By July 1, 2017, the Supreme Court shall provide guidelines setting forth standards for all attorneys who practice in juvenile court.

Source: Laws 1981, LB 346, § 28; Laws 1982, LB 787, § 12; Laws 2000, LB 1167, § 19; Laws 2015, LB15, § 1; Laws 2016, LB894, § 12; Laws 2021, LB307, § 2.

Cross References

Representation by public defender, see section 29-3915.

(e) PROSECUTION

43-274 County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or restorative justice practice or service; transfer; procedures; appeal.

(1) The county attorney or city attorney, having knowledge of a juvenile within his or her jurisdiction who appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and taking into consideration the criteria in section 43-276, may proceed as provided in this section.

(2) The county attorney or city attorney may offer pretrial diversion to the juvenile in accordance with a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07.

(3)(a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the county attorney or city attorney may utilize restorative justice practices or services as a form of, or condition of, diversion or plea bargaining or as a recommendation as a condition of disposition, through a referral to a restorative justice facilitator.

(b) For victim-involved offenses, a restorative justice facilitator shall conduct a separate individual intake and assessment session with each juvenile and victim to determine which, if any, restorative justice practice is appropriate. All participation by the victim shall be voluntary. If the victim declines to participate in any or all parts of the restorative justice practice, a victim surrogate may be invited to participate with the juvenile. If, after assessment, participation by the juvenile is deemed inappropriate, the restorative justice facilitator shall return the referral to the referring county attorney or city attorney.

(c) A victim or his or her parent or guardian shall not be charged a fee. A juvenile or his or her parent or guardian may be charged a fee according to the policies and procedures of the restorative justice facilitator and the referring county attorney or city attorney. Restorative justice facilitators shall use a sliding fee scale based on income and shall not deny services based upon the inability of a juvenile or his or her parent or guardian to pay, if funding is otherwise available.

(d) Prior to participating in any restorative justice practice or service under this section, the juvenile, the juvenile's parent or guardian, and the victim, if he or she is participating, shall sign a consent to participate form.

(e) If a reparation plan agreement is reached, the restorative justice facilitator shall forward a copy of the agreement to the referring county attorney or city attorney. The terms of the reparation plan agreement shall specify provisions for reparation, monitoring, completion, and reporting. An agreement may include, but is not limited to, one or more of the following:

(i) Participation by the juvenile in certain community service programs;

(ii) Payment of restitution by the juvenile to the victim;

(iii) Reconciliation between the juvenile and the victim;

(iv) Apology, when appropriate, between the juvenile and the victim; and

(v) Any other areas of agreement.

(f) The restorative justice facilitator shall give notice to the county attorney or city attorney regarding the juvenile's compliance with the terms of the reparation plan agreement. If the juvenile does not satisfactorily complete the terms of the agreement, the county attorney or city attorney may:

(i) Refer the matter back to the restorative justice facilitator for further restorative justice practices or services; or

(ii) Proceed with filing a juvenile court petition or criminal charge.

(g) If a juvenile meets the terms of the reparation plan agreement, the county attorney or city attorney shall either:

(i) Not file a juvenile court petition or criminal charge against the juvenile for the acts for which the juvenile was referred for restorative justice practice or services when referred as a diversion or an alternative to diversion; or

(ii) File a reduced charge as previously agreed when referred as a part of a plea negotiation.

(4) The county attorney or city attorney shall file the petition in the court with jurisdiction as outlined in section 43-246.01.

(5) When a transfer from juvenile court to county court or district court is authorized because there is concurrent jurisdiction, the county attorney or city attorney may move to transfer the proceedings. Such motion shall be filed with the juvenile court petition unless otherwise permitted for good cause shown. The juvenile court shall schedule a hearing on such motion within fifteen days after the motion is filed. The county attorney or city attorney has the burden by a preponderance of the evidence to show why such proceeding should be transferred. The juvenile shall be represented by counsel at the hearing and may present the evidence as to why the proceeding should be retained. After considering all the evidence and reasons presented by both parties, the juvenile court shall retain the proceeding unless the court determines that a preponderance of the evidence shows that the proceeding should be transferred to the county court or district court. The court shall make a decision on the motion within thirty days after the hearing. The juvenile court shall set forth findings for the reason for its decision.

An order granting or denying transfer of the case from juvenile court to county or district court shall be considered a final order for the purposes of appeal. Upon the entry of an order, any party may appeal to the Court of Appeals within ten days. Such review shall be advanced on the court docket without an extension of time granted to any party except upon a showing of exceptional cause. Appeals shall be submitted, assigned, and scheduled for oral argument as soon as the appellee's brief is due to be filed. The Court of Appeals shall conduct its review in an expedited manner and shall render the judgment and opinion, if any, as speedily as possible. During the pendency of any such appeal, the juvenile court may continue to enter temporary orders in the best interests of the juvenile pursuant to section 43-295.

If the proceeding is transferred from juvenile court to the county court or district court, the county attorney or city attorney shall file a criminal information in the county court or district court, as appropriate, and the accused shall be arraigned as provided for a person eighteen years of age or older in subdivision (1)(b) of section 29-1816.

Source: Laws 1981, LB 346, § 30; Laws 1987, LB 638, § 4; Laws 1998, LB 1073, § 20; Laws 2003, LB 43, § 13; Laws 2014, LB464, § 16; Laws 2017, LB11, § 2; Laws 2019, LB595, § 28.

43-275 Petition, complaint, or restorative justice program consent form; filing; time.

Whenever a juvenile is detained or placed in custody under the provisions of section 43-253, a petition, complaint, or restorative justice program consent form must be filed within forty-eight hours excluding nonjudicial days.

Source: Laws 1981, LB 346, § 31; Laws 1998, LB 1073, § 21; Laws 2019, LB595, § 29.

43-276 County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, restorative justice, or transfer of case; determination; considerations; referral to community-based resources.

(1) The county attorney or city attorney, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion or restorative justice, or transfer a case to or from juvenile court, and the juvenile court, county court, or district court in making the determination whether to transfer a case, shall consider: (a) The type of treatment such juvenile would most likely be amenable to; (b) whether there is evidence that the alleged offense included violence; (c) the motivation for the commission of the offense; (d) the age of the juvenile and the ages and circumstances of any others involved in the offense; (e) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court; (f) the best interests of the juvenile; (g) consideration of public safety; (h) consideration of the juvenile's ability to appreciate the nature and seriousness of his or her conduct; (i) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (j) whether the victim or juvenile agree to participate in restorative justice; (k) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (l) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (m) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (n) whether the juvenile is a criminal street gang member; and (o) such other matters as the parties deem relevant to aid in the decision.

(2) Prior to filing a petition alleging that a juvenile is a juvenile as described in subdivision (3)(b) of section 43-247, the county attorney shall make reasonable efforts to refer the juvenile and family to community-based resources available to address the juvenile's behaviors, provide crisis intervention, and maintain the juvenile safely in the home. Failure to describe the efforts required by this subsection shall be a defense to adjudication.

Source: Laws 1981, LB 346, § 32; Laws 1998, LB 1073, § 22; Laws 2000, LB 1167, § 20; Laws 2003, LB 43, § 14; Laws 2008, LB1014, § 40; Laws 2009, LB63, § 30; Laws 2012, LB972, § 2; Laws 2014, LB464, § 17; Laws 2015, LB482, § 5; Laws 2019, LB595, § 30.

(f) ADJUDICATION PROCEDURES

43-281 Adjudication of jurisdiction; temporary placement for evaluation; restrictions on placement; copy of report or evaluation.

(1) Following an adjudication of jurisdiction and prior to final disposition, the court may place the juvenile with the Office of Juvenile Services or the Department of Health and Human Services for evaluation, except that on and after October 1, 2013, no juvenile adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed with the office or the department. The office or department shall arrange and pay for an appropriate evaluation if the office or department determines that there are no parental funds or private or public insurance available to pay for such evaluation, except that on and after October 1, 2013, the office and the department shall not be responsible for such evaluations of any juvenile adjudicated under subdivision (1), (2), (3)(b), or (4) of section 43-247.

(2) On and after October 1, 2013, following an adjudication of jurisdiction under subdivision (1), (2), (3)(b), or (4) of section 43-247 and prior to final disposition, the court may order an evaluation to be arranged by the Office of Probation Administration. For a juvenile in detention, the court shall order that such evaluation be completed and the juvenile returned to the court within twenty-one days after the evaluation. For a juvenile who is not in detention, the evaluation shall be completed and the juvenile returned to the court within thirty days. The physician, psychologist, licensed mental health practitioner, professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact, licensed drug and alcohol counselor, or other provider responsible for completing the evaluation shall have up to ten days to complete the evaluation after receiving the referral authorizing the evaluation.

(3) A juvenile pending evaluation ordered under subsection (1) or (2) of this section shall not reside in a detention facility at the time of the evaluation or while waiting for the completed evaluation to be returned to the court unless detention of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

(4) The court shall provide copies of predisposition reports and evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

Source: Laws 1981, LB 346, § 37; Laws 1982, LB 787, § 16; Laws 1994, LB 436, § 1; Laws 1998, LB 1073, § 24; Laws 2013, LB561, § 19; Laws 2014, LB464, § 18; Laws 2022, LB752, § 25.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

(g) DISPOSITION

43-283.01 Preserve and reunify the family; reasonable efforts; requirements.

(1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsections (4) and (5) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the

juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under section 43-1312, efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent, or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) Except as otherwise provided in the Nebraska Indian Child Welfare Act, if the family includes a child who was conceived by the victim of a sexual assault and a biological parent is convicted of the crime under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320, the convicted biological parent of such child shall not be considered a part of the child's family for purposes of requiring reasonable efforts to preserve and reunify the family.

(6) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after the determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(7) Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

Source: Laws 1998, LB 1041, § 24; Laws 2009, LB517, § 1; Laws 2017, LB289, § 17.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-285 Care of juvenile; duties; authority; placement plan and report; when; court proceedings; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the legal custody and care of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Any such association and the department shall be responsible for applying for any health insurance available to the juvenile, including, but not limited to, medical assistance under the Medical Assistance Act. Such custody and care shall not include the guardianship of any estate of the juvenile.

(2)(a) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3)(a) or (c) of section 43-247, the court may order the department to prepare and file with the court a proposed plan for the care, placement, services, and permanency which are to be provided to such juvenile and his or her family. The health and safety of the juvenile shall be the paramount concern in the proposed plan.

(b) The department shall provide opportunities for the child, in an age or developmentally appropriate manner, to be consulted in the development of his or her plan as provided in the Nebraska Strengthening Families Act.

(c) The department shall include in the plan for a child who is fourteen years of age or older and subject to the legal care and custody of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible children, the Young Adult Bridge to Independence Act. The juvenile court shall provide a copy of the plan to all interested parties before the hearing. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the child's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to help the child prepare for the transition from foster care to a successful adulthood. The court shall also ask the child, in an age or developmentally appropriate manner, if he or she participated in the development of his or her plan and make a finding regarding the child's participation in the development of his or her plan as provided in the Nebraska Strengthening Families Act. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(d) The last court hearing before jurisdiction pursuant to subdivision (3)(a) of section 43-247 is terminated for a child who is sixteen years of age or older or pursuant to subdivision (8) of section 43-247 for a child whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years shall be called the independence hearing. In addition to other matters and requirements to be addressed at this hearing, the independence hearing shall address the child's future goals and plans and access to services and support for the transition from foster care to adulthood consistent with section 43-1311.03 and the Young Adult Bridge to Independence Act. The child shall not be required to attend the independence

hearing, but efforts shall be made to encourage and enable the child's attendance if the child wishes to attend, including scheduling the hearing at a time that permits the child's attendance. An independence coordinator as provided in section 43-4506 shall attend the hearing if reasonably practicable, but the department is not required to have legal counsel present. At the independence hearing, the court shall advise the child about the bridge to independence program, including, if applicable, the right of young adults in the bridge to independence program to request a court-appointed, client-directed attorney under subsection (1) of section 43-4510 and the benefits and role of such attorney and to request additional permanency review hearings in the bridge to independence program under subsection (5) of section 43-4508 and how to request such a hearing. The court shall also advise the child, if applicable, of the rights he or she is giving up if he or she chooses not to participate in the bridge to independence program and the option to enter such program at any time between nineteen and twenty-one years of age if the child meets the eligibility requirements of section 43-4504. The department shall present information to the court regarding other community resources that may benefit the child, specifically information regarding state programs established pursuant to 42 U.S.C. 677. The court shall also make a finding as to whether the child has received the documents as required by subsection (9) of section 43-1311.03.

(3)(a) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. Every six months, the report shall provide an updated statement regarding the eligibility of the juvenile for health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The department shall also concurrently file a written sibling placement report as described in subsection (3) of section 43-1311.02 at these times.

(b) The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties, including all of the child's siblings that are known to the department and, if the child is of school age, the school where the child is enrolled, at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. If a determination is made that it is not in the child's best interest to remain in the same school after a placement change, notice of placement change shall also be sent to the new school where the child will be enrolled. The department, association, or individual shall afford a parent or an adult sibling the option of refusing to receive such notifications. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court

approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. Within twenty-four hours after court approval of the emergency placement change, the department, association, or individual shall provide notice of the placement change to all interested parties, including all of the child's siblings that are known to the department, and, if the child is of school age, the school where the child is enrolled and the new school where the child will be enrolled.

(c) The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the Foster Care Review Office or the designated local foster care review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) The executive director and any agent or employee of the Foster Care Review Office or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Source: Laws 1981, LB 346, § 41; Laws 1982, LB 787, § 17; Laws 1984, LB 845, § 31; Laws 1985, LB 447, § 25; Laws 1989, LB 182, § 12; Laws 1990, LB 1222, § 3; Laws 1992, LB 1184, § 14; Laws 1993, LB 103, § 1; Laws 1996, LB 1044, § 133; Laws 1998, LB 1041, § 26; Laws 2010, LB800, § 23; Laws 2011, LB177, § 1; Laws 2011, LB648, § 1; Laws 2012, LB998, § 2; Laws 2013, LB216, § 15; Laws 2013, LB269, § 1; Laws 2013, LB561, § 22; Laws 2014, LB464, § 19; Laws 2014, LB853, § 23; Laws 2014, LB908, § 5; Laws 2015, LB243, § 11; Laws 2016, LB746, § 16; Laws 2018, LB1078, § 1; Laws 2019, LB600, § 1; Laws 2021, LB143, § 1.

Cross References

Foster Care Review Act, see section 43-1318.
Medical Assistance Act, see section 68-901.
Nebraska Strengthening Families Act, see section 43-4701.
Young Adult Bridge to Independence Act, see section 43-4501.

43-286 Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure; discharge; procedure; notice; hearing; individualized reentry plan.

(1) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), or (4) of section 43-247:

(a) The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in restorative justice programs or community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(i) Place the juvenile on probation subject to the supervision of a probation officer; or

(ii) Permit the juvenile to remain in his or her own home or be placed in a suitable family home or institution, subject to the supervision of the probation officer;

(b) When it is alleged that the juvenile has exhausted all levels of probation supervision and options for community-based services and section 43-251.01 has been satisfied, a motion for commitment to a youth rehabilitation and treatment center may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations that support the motion and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The Office of Juvenile Services shall be served with a copy of such motion and shall be a party to the case for all matters related to the juvenile's commitment to, placement with, or discharge from the Office of Juvenile Services; and

(iii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the burden is upon the state by a preponderance of the evidence to show that:

(A) All levels of probation supervision have been exhausted;

(B) All options for community-based services have been exhausted; and

(C) Placement at a youth rehabilitation and treatment center is a matter of immediate and urgent necessity for the protection of the juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court;

(c) After the hearing, the court may, as a condition of an order of intensive supervised probation, commit such juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center operated in compliance with state law. Upon commitment by the court to the Office of Juvenile Services, the court shall immediately notify the Office of Juvenile Services of the commitment. Intensive supervised probation for purposes of this subdivision means that the Office of Juvenile Services shall be responsible for the care and custody of the juvenile until the Office of Juvenile Services discharges the juvenile from commitment to the Office of Juvenile Services. Upon discharge of the juvenile, the court shall hold a review hearing on the conditions of probation and enter any order allowed under subdivision (1)(a) of this section;

(d) The Office of Juvenile Services shall notify those required to be served by sections 43-262 to 43-267, all interested parties, and the committing court of the pending discharge of a juvenile from the youth rehabilitation and treatment center sixty days prior to discharge and again in every case not less than thirty days prior to discharge. Upon notice of pending discharge by the Office of Juvenile Services, the court shall set a continued disposition hearing in anticipation of reentry. The Office of Juvenile Services shall work in collaboration with the Office of Probation Administration in developing an individualized reentry plan for the juvenile as provided in section 43-425. The Office of Juvenile Services shall provide a copy of the individualized reentry plan to the juvenile, the juvenile's attorney, and the county attorney or city attorney prior to the continued disposition hearing. At the continued disposition hearing, the court shall review and approve or modify the individualized reentry plan, place the juvenile under probation supervision, and enter any other order allowed by law. No hearing is required if all interested parties stipulate to the individualized reentry plan by signed motion. In such a case, the court shall approve the conditions of probation, approve the individualized reentry plan, and place the juvenile under probation supervision; and

(e) The Office of Juvenile Services is responsible for transportation of the juvenile to and from the youth rehabilitation and treatment center. The Office of Juvenile Services may contract for such services. A plan for a juvenile's transport to return to the community shall be a part of the individualized reentry plan. The Office of Juvenile Services may approve family to provide such transport when specified in the individualized reentry plan.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section.

(3) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the court may order the juvenile to be assessed for referral to participate in a restorative justice program. Factors that the judge may consider for such referral include, but are not limited to: The juvenile's age, intellectual capacity, and living environment; the ages of others who were part of the offense; the age and capacity of the victim; and the nature of the case.

(4) When a juvenile is placed on probation and a probation officer has reasonable cause to believe that such juvenile has committed a violation of a condition of his or her probation, the probation officer shall take appropriate measures as provided in section 43-286.01.

(5)(a) When a juvenile is placed on probation or under the supervision of the court and it is alleged that the juvenile is again a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this section for such adjudications and the county attorney may file a motion to revoke the juvenile's probation.

(b) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term of probation or supervision or that the juvenile has violated an order of the court, a motion to revoke

probation or supervision or to change the disposition may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the juvenile shall be entitled to those rights relating to counsel provided by section 43-272 and those rights relating to detention provided by sections 43-254 to 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or supervision or an order of the court or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation of probation or supervision or a change of disposition. The hearing shall be held within a reasonable time after the juvenile is taken into custody;

(iii) The hearing shall be conducted in an informal manner and shall be flexible enough to consider evidence, including letters, affidavits, and other material, that would not be admissible in an adversarial criminal trial;

(iv) The juvenile shall not be confined, detained, or otherwise significantly deprived of his or her liberty pursuant to the filing of a motion described in this section unless the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met. In all cases when the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met and the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation, supervision, or a court order, the juvenile shall be given a preliminary hearing. If, as a result of such preliminary hearing, probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with this subsection;

(v) If the juvenile is found by the court to have violated the terms of his or her probation or supervision or an order of the court, the court may modify the terms and conditions of the probation, supervision, or other court order, extend the period of probation, supervision, or other court order, or enter any order of disposition that could have been made at the time the original order was entered; and

(vi) In cases when the court revokes probation, supervision, or other court order, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

(6) Costs incurred on behalf of a juvenile under this section shall be paid as provided in section 43-290.01.

(7) When any juvenile is adjudicated to be a juvenile described in subdivision (4) of section 43-247, the juvenile court shall within thirty days of adjudication transmit to the Director of Motor Vehicles an abstract of the court record of adjudication.

Source: Laws 1981, LB 346, § 42; Laws 1982, LB 787, § 18; Laws 1987, LB 638, § 6; Laws 1989, LB 182, § 13; Laws 1994, LB 988, § 21; Laws 1996, LB 1044, § 134; Laws 1998, LB 1073, § 26; Laws 2000, LB 1167, § 21; Laws 2011, LB463, § 4; Laws 2012, LB972,

§ 3; Laws 2013, LB561, § 23; Laws 2014, LB464, § 20; Laws 2017, LB8, § 2; Laws 2018, LB670, § 7; Laws 2019, LB595, § 31; Laws 2020, LB1148, § 10.

Cross References

Juvenile probation officers, appointment, see section 29-2253.
Placements and commitments, restrictions, see section 43-251.01.

43-286.01 Juveniles; graduated response; probation officer; duties; powers; county attorney; file action to revoke probation; when.

(1) For purposes of this section, graduated response means an accountability-based series of sanctions, incentives, and services designed to facilitate the juvenile's continued progress in changing behavior, ongoing compliance, and successful completion of probation. Graduated response does not include restrictions of liberty that would otherwise require a hearing under subsection (3) of section 43-253.

(2) The Office of Probation Administration may establish a statewide standardized graduated response matrix of incentives for compliance and positive behaviors and sanctions for probationers who violate the terms and conditions of a court order. The graduated response system shall use recognized best practices and be developed with the input of stakeholders, including judges, probation officers, county attorneys, defense attorneys, juveniles, and parents. The office shall provide implementation and ongoing training to all probation officers on the graduated response options.

(3) Graduated response sanctions should be immediate, certain, consistent, and fair to appropriately address the behavior. Failure to complete a sanction may result in repeating the sanction, increasing the duration, or selecting a different sanction similar in nature. Continued failure to comply could result in a request for a motion to revoke probation. Once a sanction is successfully completed the alleged probation violation is deemed resolved and cannot be alleged as a violation in future proceedings.

(4) Graduated response incentives should provide positive reinforcement to encourage and support positive behavior change and compliance with court-ordered conditions of probation.

(5) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has committed a violation of the terms of the juvenile's probation while on probation, but that such juvenile will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall either:

(a) Impose one or more graduated response sanctions with the approval of his or her chief probation officer or such chief's designee. The decision to impose graduated response sanctions in lieu of formal revocation proceedings rests with the probation officer and his or her chief probation officer or such chief's designee and shall be based upon such juvenile's risk level, the severity of the violation, and the juvenile's response to the violation. If graduated response sanctions are to be imposed, such juvenile shall acknowledge in writing the nature of the violation and agree upon the graduated response sanction with approval of such juvenile's parents or guardian. Such juvenile has the right to decline to acknowledge the violation, and if he or she declines to acknowledge the violation, the probation officer shall submit a written report pursuant to subdivision (5)(b) of this section. If the juvenile fails to satisfy the

graduated response sanctions and the office determines that a motion to revoke probation should be pursued, the probation officer shall submit a written report pursuant to subdivision (5)(b) of this section. A copy of the report shall be submitted to the county attorney of the county where probation was imposed; or

(b) Submit a written report to the county attorney of the county where probation was imposed and to the juvenile's attorney of record, outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the juvenile subject to the supervision of a probation officer. The report shall also include a statement regarding why graduated response sanctions were not utilized or were ineffective. If there is no attorney of record for the juvenile, the office shall notify the court and counsel for the juvenile shall be appointed.

(6) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has violated a condition of his or her probation and that such juvenile will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall take such juvenile into temporary custody without a warrant and may call on any peace officer for assistance as provided in section 43-248. Continued detention or deprivation of liberty shall be subject to the criteria and requirements of sections 43-251.01, 43-260, and 43-260.01 and subdivision (5)(b)(iv) of section 43-286, and a hearing shall be held before the court within twenty-four hours as provided in subsection (3) of section 43-253.

(7) Immediately after detention or deprivation of liberty pursuant to subsection (6) of this section, the probation officer shall notify the county attorney of the county where probation was imposed and the juvenile's attorney of record and submit a written report describing the risk of harm to lives or property or of fleeing the jurisdiction which precipitated the need for such detention or deprivation of liberty and of any violation of probation. If there is no attorney of record for the juvenile, the office shall notify the court and counsel for the juvenile shall be appointed. After prompt consideration of the written report, the county attorney shall:

(a) Order the release of the juvenile from confinement or alternative to detention subject to the supervision of a probation officer; or

(b) File with the adjudicating court a motion to revoke the probation.

(8) Whenever a county attorney receives a report from a probation officer that a juvenile subject to the supervision of a probation officer has violated a condition of probation and the probation officer is seeking revocation of probation, the county attorney may file a motion to revoke probation.

(9) Whenever a juvenile subject to supervision of a probation officer is engaging in positive behavior, completion of goals, and compliance with the terms of probation, the probation officer shall use graduated incentives to provide positive reinforcement and encouragement of such behavior. The office shall keep records of all incentives and provide such records to the county attorney or the juvenile's attorney upon request.

(10) During the term of probation, the court, on application of a probation officer or of the juvenile or on its own motion, may reduce or eliminate any of the conditions imposed on the juvenile. Upon completion of the term of probation or the earlier discharge of the juvenile, the juvenile shall be relieved

of any obligations imposed by the order of the court and his or her record shall be sealed pursuant to section 43-2,108.04.

(11) The probation administrator shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2010, LB800, § 7; R.S.Supp.,2010, § 29-2262.08; Laws 2011, LB463, § 5; Laws 2017, LB8, § 3.

43-287 Impoundment of license or permit issued under Motor Vehicle Operator's License Act; other powers of court; copy of abstract to Department of Motor Vehicles; fine for excessive absenteeism from school; not eligible for ignition interlock permit.

(1) When a juvenile is adjudged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the juvenile court may:

(a) If such juvenile holds any license or permit issued under the Motor Vehicle Operator's License Act, impound any such license or permit for thirty days; or

(b) If such juvenile does not have a permit or license issued under the Motor Vehicle Operator's License Act, prohibit such juvenile from obtaining any permit or any license pursuant to the act for which such juvenile would otherwise be eligible until thirty days after the date of such order.

(2) A copy of an abstract of the juvenile court's adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under subsection (1) of this section. If a juvenile whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of section 60-4,108.

(3) When a juvenile is adjudged to be a juvenile described in subdivision (3)(a) of section 43-247 for excessive absenteeism from school, the juvenile court may issue the parents or guardians of such juvenile a fine not to exceed five hundred dollars for each offense or order such parents or guardians to complete specified hours of community service. For community service ordered under this subsection, the juvenile court may require that all or part of the service be performed for a public school district or nonpublic school if the court finds that service in the school is appropriate under the circumstances.

(4) A juvenile who holds any license or permit issued under the Motor Vehicle Operator's License Act and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit.

Source: Laws 2010, LB800, § 24; Laws 2012, LB751, § 5; Laws 2019, LB269, § 1.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

43-292.02 Termination of parental rights; state; duty to file petition; when.

(1) A petition shall be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall join as a party to the petition, and the state shall concurrently identify, recruit, process, and approve a qualified family for an adoption of the juvenile, if:

(a) A juvenile has been in foster care under the responsibility of the state for fifteen or more months of the most recent twenty-two months; or

(b) A court of competent jurisdiction has determined the juvenile to be an abandoned infant or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or committed a felony assault that has resulted in serious bodily injury to the juvenile or another minor child of the parent. For purposes of this subdivision, infant means a child eighteen months of age or younger.

(2) A petition shall not be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall not join as a party to the petition if the sole factual basis for the petition is that (a) the parent or parents of the juvenile are financially unable to provide health care for the juvenile or (b) the parent or parents of the juvenile are incarcerated. The fact that a qualified family for an adoption of the juvenile has been identified, recruited, processed, and approved shall have no bearing on whether parental rights shall be terminated.

(3) The petition is not required to be filed on behalf of the state or if a petition is filed the state shall not be required to join in a petition to terminate parental rights or to concurrently find a qualified family to adopt the juvenile under this section if:

(a) The child is being cared for by a relative;

(b) The Department of Health and Human Services has documented in the case plan or permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the juvenile; or

(c) The family of the juvenile has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan approved by the court if reasonable efforts to preserve and reunify the family are required under section 43-283.01.

(4) Except as otherwise provided in the Nebraska Indian Child Welfare Act, if a child is conceived by the victim of a sexual assault, a petition for termination of parental rights of the perpetrator shall be granted if such termination is in the best interests of the child and (a) the perpetrator has been convicted of or pled guilty or nolo contendere to sexual assault of the child's birth parent under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 or (b) the perpetrator has fathered the child or given birth to the child as a result of such sexual assault.

Source: Laws 1998, LB 1041, § 29; Laws 2017, LB289, § 18.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-296 Associations receiving juveniles; supervision by Department of Health and Human Services; certificate; reports; statements.

All associations receiving juveniles under the Nebraska Juvenile Code shall be subject to the same visitation, inspection, and supervision by the Department of Health and Human Services as are public charitable institutions of this state, and it shall be the duty of the department to pass annually upon the fitness of every such association as may receive or desire to receive juveniles under the provisions of such code. Upon the department being satisfied that such association is competent and has adequate facilities to care for such juveniles, it shall issue to such association a certificate to that effect, which certificate shall continue in force for one year unless sooner revoked by the department. No juvenile shall be committed to any such association which has not received such a certificate within the fifteen months immediately preceding the commitment. The court may at any time require from any association receiving or desiring to receive juveniles under the provisions of the Nebraska Juvenile Code such reports, information, and statements as the judge shall deem proper and necessary for his or her action, and the court shall in no case be required to commit a juvenile to any association whose standing, conduct, or care of juveniles or ability to care for the same is not satisfactory to the court.

Source: Laws 1981, LB 346, § 52; Laws 1985, LB 447, § 28; Laws 1996, LB 1044, § 146; Laws 2012, LB1160, § 11; Laws 2013, LB222, § 6; Laws 2017, LB417, § 5.

Cross References

Department of Health and Human Services, supervisory powers, see section 43-707.

(i) MISCELLANEOUS PROVISIONS

43-2,108 Juvenile court; record; case file; how kept; certain reports and records not open to inspection without order of court; exceptions.

(1) The juvenile court judge shall keep a record of all proceedings of the court in each case, including appearances, findings, orders, decrees, and judgments, and any evidence which he or she feels it is necessary and proper to record. The case file shall contain the complaint or petition and subsequent pleadings. The case file may be maintained as an electronic document through the court's electronic case management system, on microfilm, or in a paper volume and disposed of when determined by the State Records Administrator pursuant to the Records Management Act.

(2) Except as provided in subsections (3) and (4) of this section, the medical, psychological, psychiatric, and social welfare reports and the records of juvenile probation officers as they relate to individual proceedings in the juvenile court shall not be open to inspection, without order of the court. Such records shall be made available to a district court of this state or the District Court of the United States on the order of a judge thereof for the confidential use of such judge or his or her probation officer as to matters pending before such court but shall not be made available to parties or their counsel; and such district court records shall be made available to a county court or separate juvenile court upon request of the county judge or separate juvenile judge for the confidential use of such judge and his or her probation officer as to matters pending before such court, but shall not be made available by such judge to the parties or their counsel.

(3) As used in this section, confidential record information means all docket records, other than the pleadings, orders, decrees, and judgments; case files and records; reports and records of probation officers; and information supplied to the court of jurisdiction in such cases by any individual or any public or private institution, agency, facility, or clinic, which is compiled by, produced by, and in the possession of any court. In all cases under subdivision (3)(a) of section 43-247, access to all confidential record information in such cases shall be granted only as follows: (a) The court of jurisdiction may, subject to applicable federal and state regulations, disseminate such confidential record information to any individual, or public or private agency, institution, facility, or clinic which is providing services directly to the juvenile and such juvenile's parents or guardian and his or her immediate family who are the subject of such record information; (b) the court of jurisdiction may disseminate such confidential record information, with the consent of persons who are subjects of such information, or by order of such court after showing of good cause, to any law enforcement agency upon such agency's specific request for such agency's exclusive use in the investigation of any protective service case or investigation of allegations under subdivision (3)(a) of section 43-247, regarding the juvenile or such juvenile's immediate family, who are the subject of such investigation; and (c) the court of jurisdiction may disseminate such confidential record information to any court, which has jurisdiction of the juvenile who is the subject of such information upon such court's request.

(4) The court shall provide copies of predispositional reports and evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

(5) In all cases under sections 43-246.01 and 43-247, the office of Inspector General of Nebraska Child Welfare may submit a written request to the probation administrator for access to the records of juvenile probation officers in a specific case. Upon a juvenile court order, the records shall be provided to the Inspector General within five days for the exclusive use in an investigation pursuant to the Office of Inspector General of Nebraska Child Welfare Act. Nothing in this subsection shall prevent the notification of death or serious injury of a juvenile to the Inspector General of Nebraska Child Welfare pursuant to section 43-4318 as soon as reasonably possible after the Office of Probation Administration learns of such death or serious injury.

(6) In all cases under sections 43-246.01 and 43-247, the juvenile court shall disseminate confidential record information to the Foster Care Review Office pursuant to the Foster Care Review Act.

(7) Nothing in subsections (3), (5), and (6) of this section shall be construed to restrict the dissemination of confidential record information between any individual or public or private agency, institute, facility, or clinic, except any such confidential record information disseminated by the court of jurisdiction pursuant to this section shall be for the exclusive and private use of those to whom it was released and shall not be disseminated further without order of such court.

(8)(a) Any records concerning a juvenile court petition filed pursuant to subdivision (3)(c) of section 43-247 shall remain confidential except as may be provided otherwise by law. Such records shall be accessible to (i) the juvenile except as provided in subdivision (b) of this subsection, (ii) the juvenile's

counsel, (iii) the juvenile's parent or guardian, and (iv) persons authorized by an order of a judge or court.

(b) Upon application by the county attorney or by the director of the facility where the juvenile is placed and upon a showing of good cause therefor, a judge of the juvenile court having jurisdiction over the juvenile or of the county where the facility is located may order that the records shall not be made available to the juvenile if, in the judgment of the court, the availability of such records to the juvenile will adversely affect the juvenile's mental state and the treatment thereof.

(9) Nothing in subsection (3), (5), or (6) of this section shall be construed to restrict the immediate dissemination of a current picture and information about a child who is missing from a foster care or out-of-home placement. Such dissemination by the Office of Probation Administration shall be authorized by an order of a judge or court. Such information shall be subject to state and federal confidentiality laws and shall not include that the child is in the care, custody, or control of the Department of Health and Human Services or under the supervision of the Office of Probation Administration.

Source: Laws 1981, LB 346, § 65; Laws 1997, LB 622, § 73; Laws 2014, LB464, § 25; Laws 2015, LB347, § 2; Laws 2016, LB954, § 1; Laws 2017, LB225, § 4; Laws 2018, LB193, § 79.

Cross References

Foster Care Review Act, see section 43-1318.
Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.
Records Management Act, see section 84-1220.

43-2,108.01 Sealing of records; juveniles eligible.

(1) Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and, after being taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation, the county attorney or city attorney:

(a) Declined to file a juvenile petition or criminal complaint;

(b) Offered juvenile pretrial diversion, mediation, or restorative justice to the juvenile under the Nebraska Juvenile Code;

(c) Filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247;

(d) Filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia;

(e) Filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordinance, other than for a traffic offense when all offenses in the case are waivable offenses; or

(f) Filed a criminal complaint in county or district court for a felony offense under state law or a city or village ordinance that was subsequently transferred to juvenile court for ongoing jurisdiction.

(2) The changes made by Laws 2019, LB354, to the relief set forth in sections 43-2,108.03 to 43-2,108.05 shall apply to all persons described in this section,

as amended by Laws 2019, LB354, and Laws 2020, LB1148, for offenses occurring prior to, on, or after September 1, 2019.

Source: Laws 2010, LB800, § 26; Laws 2011, LB463, § 6; Laws 2019, LB354, § 2; Laws 2019, LB595, § 32; Laws 2020, LB1148, § 11.

43-2,108.02 Sealing of records; notice to juvenile; contents.

(1) By January 1, 2020, the Supreme Court shall promulgate a written notice that:

(a) States in developmentally appropriate language that, for a juvenile described in section 43-2,108.01, the juvenile's record will be automatically sealed if (i) no charges are filed as a result of the determination of the prosecuting attorney, (ii) the charges are dismissed, (iii) the juvenile has satisfactorily completed the diversion, mediation, restorative justice, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code, or (iv) the juvenile has satisfactorily completed the county court diversion program, probation ordered by the court, or sentence ordered by the court;

(b) States in developmentally appropriate language that, if the record is not sealed as provided in subdivision (1)(a) of this section, the juvenile or the juvenile's parent or guardian may file a motion to seal the record with the court when the juvenile reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner; and

(c) Explains in developmentally appropriate language what sealing the record means.

(2) For a juvenile described in section 43-2,108.01, the county attorney or city attorney shall attach a copy of the notice to any juvenile petition or criminal complaint.

Source: Laws 2010, LB800, § 27; Laws 2011, LB463, § 7; Laws 2019, LB354, § 3; Laws 2019, LB595, § 33.

43-2,108.03 Sealing of records; county attorney or city attorney; duties; motion to seal record authorized.

(1)(a) If a juvenile described in section 43-2,108.01 was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation but no juvenile petition or criminal complaint was filed against the juvenile with respect to the arrest or custody, the county attorney or city attorney shall notify the government agency responsible for the arrest, custody, citation in lieu of arrest, or referral for prosecution without citation that no criminal charge or juvenile court petition was filed. The county attorney or city attorney shall provide written notification to the juvenile that no juvenile petition or criminal complaint was filed and provide the juvenile with the notice described in section 43-2,108.02.

(b) If a juvenile described in subdivision (1)(a) of this section discovers that his or her record was not automatically sealed, such juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (1)(a) of this section.

(2)(a) If the county attorney or city attorney offered and a juvenile described in section 43-2,108.01 has agreed to pretrial diversion, mediation, or restorative justice, the county attorney or city attorney shall notify the government agency

responsible for the arrest or custody when the juvenile has satisfactorily completed the resulting diversion, mediation, or restorative justice. At the time the juvenile is offered diversion, mediation, or restorative justice, the county attorney or city attorney shall provide the notice described in section 43-2,108.02 to the juvenile. The county attorney or city attorney shall also provide written notification to the juvenile of his or her satisfactory or unsatisfactory completion of diversion, mediation, or restorative justice.

(b) If a juvenile who was satisfactorily discharged from diversion, mediation, or restorative justice discovers that his or her record was not automatically sealed, the juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (2)(a) of this section.

(3)(a) If the juvenile was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation and charges were filed but the case was dismissed by the court, the court shall seal the record as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (3)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(4)(a) If a juvenile described in section 43-2,108.01 has satisfactorily completed the probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or if the juvenile has satisfactorily completed the probation or sentence ordered by a county court, the court shall seal the records as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (4)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(5) A government agency or court that receives notice under subdivision (1)(a) or (2)(a) of this section shall, upon such receipt, immediately seal all records housed at that government agency or court pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, mediation, or restorative justice.

(6) When a juvenile described in section 43-2,108.01 whose records have not been automatically sealed as provided in subsection (1), (2), (3), or (4) of this section reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner, such juvenile or his or her parent or guardian may file a motion in the court of record asking the court to seal the record pertaining to the offense which resulted in disposition, adjudication, or diversion in juvenile court or diversion or sentence of the county court. The motion shall set forth the facts supporting the argument that the individual who is the subject of the juvenile petition or criminal complaint has been satisfactorily rehabilitated.

Source: Laws 2010, LB800, § 28; Laws 2011, LB463, § 8; Laws 2019, LB354, § 4; Laws 2019, LB595, § 34.

43-2,108.04 Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations.

(1) When a proceeding to seal the record is initiated, the court shall promptly notify the county attorney or city attorney involved in the case that is the

subject of the proceeding to seal the record of the proceedings, and shall promptly notify the Department of Health and Human Services of the proceedings if the juvenile whose record is the subject of the proceeding is a ward of the state at the time the proceeding is initiated or if the department was a party in the proceeding.

(2) A party notified under subsection (1) of this section may file a response with the court within thirty days after receiving such notice. Any such response shall be served on all parties to the case. If the response objects to the sealing of a record, such response shall specify which factor or factors under subsection (5) of this section form the basis for the objection and shall set forth the facts supporting any argument that the juvenile has not been satisfactorily rehabilitated.

(3) If a party notified under subsection (1) of this section does not file a response with the court or files a response that indicates there is no objection to the sealing of the record, the court shall order that the record of the juvenile under consideration be sealed.

(4) If a party receiving notice under subsection (1) of this section files a response with the court objecting to the sealing of the record, the court shall conduct a hearing on the motion within sixty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

(5) After conducting a hearing in accordance with this section, the court shall order the record of the juvenile that is the subject of the motion be sealed if it finds by a preponderance of the evidence that the juvenile has been rehabilitated to a satisfactory degree. In determining whether the juvenile has been rehabilitated to a satisfactory degree, the court may consider all of the following:

(a) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, restorative justice, probation, supervision, other treatment or rehabilitation program, or sentence;

(b) The education and employment history of the juvenile; and

(c) Any other circumstances that may relate to the rehabilitation of the juvenile.

(6) If, after conducting the hearing in accordance with this section, the juvenile is not found to be satisfactorily rehabilitated such that the record is not ordered to be sealed, a juvenile who is a person described in section 43-2,108.01 or such juvenile's parent or guardian may not move the court to seal the record for one year after the court's decision not to seal the record is made, unless such time restriction is waived by the court.

Source: Laws 2010, LB800, § 29; Laws 2011, LB463, § 9; Laws 2019, LB354, § 5; Laws 2019, LB595, § 35.

43-2,108.05 Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.

(1) If the court orders the record of a juvenile sealed, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the offense, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, be deemed never to have occurred;

(b) Send notice of the order to seal the record (i) if the record includes impoundment or prohibition to obtain a license or permit pursuant to section 43-287, to the Department of Motor Vehicles, (ii) if the juvenile whose record has been ordered sealed was a ward of the state at the time the proceeding was initiated or if the Department of Health and Human Services was a party in the proceeding, to such department, and (iii) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all notified under subdivision (1)(b) of this section to seal all records pertaining to the offense;

(d) If the case was transferred from district court to juvenile court or was transferred under section 43-282, send notice of the order to seal the record to the transferring court; and

(e) Explain to the juvenile using developmentally appropriate language what sealing the record means. The explanation shall be given verbally if the juvenile is present in the court at the time the court issues the sealing order and by written notice sent by regular mail to the juvenile's last-known address if the juvenile is not present in the court at the time the court issues the sealing order. The sealing order shall include contact information for each government agency subject to the sealing order.

(2) The effect of having a record sealed is that thereafter no person is allowed to release any information concerning such record, except as provided by this section. After a record is sealed, the person whose record was sealed can respond to any public inquiry as if the offense resulting in such record never occurred. A government agency and any other public office or agency shall reply to any public inquiry that no information exists regarding a sealed record. Except as provided in subsection (3) of this section, an order to seal the record applies to every government agency and any other public office or agency that has a record relating to the offense, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Upon the written request of a person whose record has been sealed and the presentation of a copy of such order, a government agency or any other public office or agency shall seal all records pertaining to the offense.

(3) A sealed record is accessible to the individual who is the subject of the sealed record and any persons authorized by such individual, law enforcement officers, county attorneys, and city attorneys in the investigation, prosecution, and sentencing of crimes, to the sentencing judge in the sentencing of criminal defendants, to a judge making a determination whether to transfer a case to or from juvenile court, to any attorney representing the subject of the sealed record, and to the Inspector General of Nebraska Child Welfare pursuant to an investigation conducted under the Office of Inspector General of Nebraska Child Welfare Act. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made by the following persons or for the following purposes:

(a) By the court or by any person allowed to inspect such records by an order of the court for good cause shown;

(b) By the court, city attorney, or county attorney for purposes of collection of any remaining parental support or obligation balances under section 43-290;

(c) By the Nebraska Probation System for purposes of juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation and by the Department of Correctional Services, the Office of Juvenile Services, a juvenile assessment center, a criminal detention facility, a juvenile detention facility, or a staff secure juvenile facility, for an individual committed to it, placed with it, or under its care;

(d) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the preparation of evaluations, compliance with federal reporting requirements, or the supervision and protection of persons placed with the department or for licensing or certification purposes under sections 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act;

(e) By the individual who is the subject of the sealed record and by persons authorized by such individual. The individual shall provide satisfactory verification of his or her identity;

(f) At the request of a party in a civil action that is based on a case that has a sealed record, as needed for the civil action. The party also may copy the sealed record as needed for the civil action. The sealed record shall be used solely in the civil action and is otherwise confidential and subject to this section;

(g) By persons engaged in bona fide research, with the permission of the court or the State Court Administrator, only if the research results in no disclosure of the person's identity and protects the confidentiality of the sealed record; or

(h) By a law enforcement agency if the individual whose record has been sealed applies for employment with the law enforcement agency.

(4) Nothing in this section prohibits the Department of Health and Human Services from releasing information from sealed records in the performance of its duties with respect to the supervision and protection of persons served by the department.

(5) In any application for employment, bonding, license, education, or other right or privilege, any appearance as a witness, or any other public inquiry, a person cannot be questioned with respect to any offense for which the record is sealed. If an inquiry is made in violation of this subsection, the person may respond as if the offense never occurred. Applications for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record. Employers shall not ask if an applicant has had a record sealed. The Department of Labor shall develop a link on the department's website to inform employers that employers cannot ask if an applicant had a record sealed and that an application for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record.

(6) Any person who knowingly violates this section shall be guilty of a Class V misdemeanor.

Source: Laws 2010, LB800, § 30; Laws 2011, LB463, § 10; Laws 2013, LB265, § 31; Laws 2013, LB561, § 24; Laws 2015, LB265, § 6; Laws 2016, LB954, § 2; Laws 2019, LB354, § 6.

Cross References

Child Care Licensing Act, see section 71-1908.
Children's Residential Facilities and Placing Licensure Act, see section 71-1924.
Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

(j) SEPARATE JUVENILE COURTS

43-2,112 Establishment; petition; election; clerk of county court; duties.

The question of whether or not there shall be established a separate juvenile court in any county having a population of seventy-five thousand or more inhabitants shall be submitted to the registered voters of any such county at the first statewide general election or at any special election held not less than four months after the filing with the Secretary of State of a petition requesting the establishment of such court signed by registered voters of such county in a number not less than five percent of the total votes cast for Governor in such county at the general state election next preceding the filing of the petition. The question shall be submitted to the registered voters of the county in the following form:

Shall there be established in . . . . . County a separate juvenile court?

. . . . . Yes

. . . . . No

The election shall be conducted and the ballots shall be counted and canvassed in the manner prescribed by the Election Act.

After a separate juvenile court has been established, the clerk of the county court shall forthwith transfer to the trial docket of the separate juvenile court all pending matters within the exclusive jurisdiction of the separate juvenile court for consideration and disposition by the judge thereof.

Source: Laws 1959, c. 189, § 2, p. 683; Laws 1976, LB 669, § 2; Laws 1977, LB 118, § 1; Laws 1979, LB 373, § 2; R.S.Supp.,1980, § 43-229; Laws 1981, LB 346, § 69; Laws 1984, LB 973, § 2; Laws 1994, LB 76, § 553; Laws 2018, LB193, § 80.

Cross References

Election Act, see section 32-101.

43-2,113 Rooms and offices; jurisdiction; powers and duties.

(1) In counties where a separate juvenile court is established, the county board of the county shall provide suitable rooms and offices for the accommodation of the judge of the separate juvenile court and the officers and employees appointed by such judge or by the probation administrator pursuant to subsection (4) of section 29-2253. Such separate juvenile court and the judge, officers, and employees of such court shall have the same and exclusive jurisdiction, powers, and duties that are prescribed in the Nebraska Juvenile Code, concurrent jurisdiction under section 83-223, and such other jurisdiction, powers, and duties as specifically provided by law.

(2) A juvenile court created in a separate juvenile court judicial district or a county court sitting as a juvenile court in all other counties shall have and exercise jurisdiction within such juvenile court judicial district or county court judicial district with the county court and district court in all matters arising under Chapter 42, article 3, when the care, support, custody, or control of minor children under the age of eighteen years is involved. Such cases shall be

filed in the county court and district court and may, with the consent of the juvenile judge, be transferred to the trial docket of the separate juvenile court or county court.

(3) All orders issued by a separate juvenile court or a county court which provide for child support or spousal support as defined in section 42-347 shall be governed by sections 42-347 to 42-381 and 43-290 relating to such support. Certified copies of such orders shall be filed by the clerk of the separate juvenile or county court with the clerk of the district court who shall maintain a record as provided in subsection (4) of section 42-364. There shall be no fee charged for the filing of such certified copies.

Source: Laws 1959, c. 189, § 3, p. 684; Laws 1961, c. 205, § 2, p. 618; Laws 1963, c. 527, § 1, p. 1653; R.S.1943, (1978), § 43-230; Laws 1981, LB 499, § 41; Laws 1981, LB 346, § 70; Laws 1984, LB 13, § 78; Laws 1984, LB 973, § 3; Laws 1985, LB 447, § 33; Laws 1985, Second Spec. Sess., LB 7, § 64; Laws 1986, LB 529, § 49; Laws 1986, LB 600, § 11; Laws 1991, LB 830, § 30; Laws 1993, LB 435, § 2; Laws 1994, LB 490, § 2; Laws 1996, LB 1296, § 21; Laws 1997, LB 229, § 35; Laws 2007, LB554, § 40; Laws 2018, LB193, § 81.

43-2,119 Judges; number; presiding judge.

(1) The number of judges of the separate juvenile court in counties which have established a separate juvenile court shall be:

(a) Two judges in counties having seventy-five thousand inhabitants but less than two hundred thousand inhabitants;

(b) Four judges in counties having at least two hundred thousand inhabitants but less than four hundred thousand inhabitants; and

(c) Six judges in counties having four hundred thousand inhabitants or more.

(2) The senior judge in point of service as a juvenile court judge shall be the presiding judge. The judges shall rotate the office of presiding judge every three years unless the judges agree to another system.

Source: Laws 1972, LB 1362, § 1; Laws 1973, LB 446, § 1; Laws 1976, LB 669, § 3; R.S.1943, (1978), § 43-233.01; Laws 1981, LB 346, § 76; Laws 1995, LB 19, § 2; Laws 1998, LB 404, § 3; Laws 2001, LB 23, § 3; Laws 2007, LB377, § 4; Laws 2017, LB10, § 1.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,129 Code, how cited.

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

Source: Laws 1981, LB 346, § 85; Laws 1985, LB 447, § 35; Laws 1989, LB 182, § 19; Laws 1994, LB 1106, § 8; Laws 1997, LB 622, § 74; Laws 1998, LB 1041, § 31; Laws 1998, LB 1073, § 27; Laws 2000, LB 1167, § 23; Laws 2003, LB 43, § 16; Laws 2006, LB 1115, § 32; Laws 2008, LB1014, § 42; Laws 2010, LB800, § 31; Laws 2011, LB463, § 11; Laws 2013, LB561, § 25; Laws 2014, LB464, § 26; Laws 2015, LB482, § 6; Laws 2017, LB180, § 2; Laws 2018, LB990, § 7.

ARTICLE 4
OFFICE OF JUVENILE SERVICES

Section

43-401 Act, how cited.

Sections 43-401 to 43-431 shall be known and may be cited as the Health and Human Services, Office of Juvenile Services Act.

Source: Laws 1998, LB 1073, § 33; Laws 2012, LB972, § 4; Laws 2020, LB1140, § 4; Laws 2020, LB1188, § 1.

43-403 Terms, defined.

For purposes of the Health and Human Services, Office of Juvenile Services Act:

(1) Aftercare means the control, supervision, and care exercised over juveniles who have been discharged from commitment;

(2) Committed means an order by a court committing a juvenile to the care and custody of the Office of Juvenile Services for treatment at a youth rehabilitation and treatment center identified in the court order;

(3) Community supervision means the control, supervision, and care exercised over juveniles when a commitment to the level of treatment of a youth rehabilitation and treatment center has not been ordered by the court;

(4) Emergency, for purposes of sections 43-427 to 43-430, means a public health emergency or a situation, including fire, flood, tornado, natural disaster, or damage to a youth rehabilitation and treatment center, that renders the youth rehabilitation and treatment center uninhabitable. Emergency does not include inadequate staffing;

(5) Evaluation means assessment of the juvenile's social, physical, psychological, and educational development and needs, including a recommendation as to an appropriate treatment plan; and

(6) Treatment means the type of supervision, care, and rehabilitative services provided for the juvenile at a youth rehabilitation and treatment center operated by the Office of Juvenile Services.

Source: Laws 1998, LB 1073, § 35; Laws 2020, LB1140, § 5; Laws 2020, LB1188, § 2; Laws 2021, LB273, § 2.

43-404 Office of Juvenile Services; created; powers and duties.

There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of the youth rehabilitation and treatment centers. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be responsible for the administration of the facilities and programs of the office. The department may subcontract with a state agency or private provider to provide services related to the facilities and programs of the Office of Juvenile Services.

Source: Laws 1994, LB 988, § 10; Laws 1996, LB 1044, § 960; R.S.Supp.,1996, § 83-925.02; Laws 1998, LB 1073, § 36; Laws 2007, LB296, § 109; Laws 2013, LB561, § 26; Laws 2020, LB1188, § 3.

43-405 Office of Juvenile Services; administrative duties.

The administrative duties of the Office of Juvenile Services are to:

(1) Manage, establish policies for, and administer the office, including all facilities and programs operated by the office or provided through the office by contract with a provider;

(2) Supervise employees of the office, including employees of the facilities and programs operated by the office;

(3) Have separate budgeting procedures and develop and report budget information separately from the Department of Health and Human Services;

(4) Adopt and promulgate rules and regulations for the levels of treatment and for management, control, screening, treatment, rehabilitation, transfer, discharge, and evaluation of juveniles committed to the Office of Juvenile Services;

(5) Ensure that statistical information concerning juveniles committed to facilities of the office is collected, developed, and maintained for purposes of research and the development of treatment programs;

(6) Monitor commitments, placements, and evaluations at facilities and programs operated by the office or through contracts with providers and submit electronically an annual report of its findings to the Legislature. The report shall include an assessment of the administrative costs of operating the facilities, the cost of programming, and the savings realized through reductions in commitments, placements, and evaluations;

(7) Coordinate the programs and services of the juvenile justice system with other governmental agencies and political subdivisions;

(8) Coordinate educational, vocational, and social counseling for juveniles committed to the office; and

(9) Exercise all powers and perform all duties necessary to carry out its responsibilities under the Health and Human Services, Office of Juvenile Services Act.

Source: Laws 1998, LB 1073, § 37; Laws 2012, LB782, § 44; Laws 2012, LB972, § 5; Laws 2012, LB1160, § 12; Laws 2013, LB222, § 7; Laws 2013, LB561, § 27; Laws 2020, LB1188, § 4.

43-406 Office of Juvenile Services; individualized treatment plan; case classification and management; requirements.

The Office of Juvenile Services shall utilize:

(1) Evidence-based and validated risk and needs assessment instruments for use in determining the individualized treatment plan for each juvenile committed to the office;

(2) A case classification process to include levels of treatment defined by rules and regulations and case management standards for each level of treatment;

(3) Case management for all juveniles committed to the office; and

(4) A management information system. The system shall be a unified, interdepartmental client information system which supports the management function as well as the service function.

Source: Laws 1994, LB 988, § 15; Laws 1995, LB 371, § 27; Laws 1996, LB 1141, § 1; Laws 1997, LB 307, § 229; Laws 1997, LB 882, § 12; R.S.Supp.,1997, § 83-925.07; Laws 1998, LB 1073, § 38; Laws 2013, LB561, § 28; Laws 2020, LB1188, § 5.

43-407 Office of Juvenile Services; programs and treatment services; individualized treatment plan; placement; procedure; case management and coordination process; funding utilization; intent; evidence-based services, policies, practices, and procedures; report; contents; Executive Board of Legislative Council; powers.

(1) The Office of Juvenile Services shall design and make available programs and treatment services through youth rehabilitation and treatment centers. The programs and treatment services shall be evidence-based and based upon the individual or family evaluation process using evidence-based, validated risk and needs assessments to create an individualized treatment plan. The treatment plan shall be developed within fourteen days after admission and provided to the committing court and interested parties. The court may, on its own motion or upon the motion of an interested party, set a hearing to review the treatment plan.

(2) A juvenile may be committed by a court to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center operated and utilized in compliance with state law pursuant to a hearing described in subdivision (1)(b)(iii) of section 43-286. The office shall not change a juvenile's placement except as provided in this section. If a juvenile placed at a youth rehabilitation and treatment center is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the Office of Juvenile Services may arrange for such treatment to be provided at the Hastings Regional Center or may transition the juvenile to another inpatient or subacute residential treatment facility licensed as a treatment facility in the State of Nebraska and shall provide notice of the change in placement pursuant to subsection (3) of this section. Except in a case requiring emergency admission to an inpatient facility, the juvenile shall not be discharged by the Office of Juvenile Services until the juvenile has been returned to the court for a review of his or her conditions of probation and the juvenile has been transitioned to the clinically appropriate level of care. Programs and treatment services shall address:

(a) Behavioral impairments, severe emotional disturbances, sex offender behaviors, and other mental health or psychiatric disorders;

(b) Drug and alcohol addiction;

(c) Health and medical needs;

(d) Education, special education, and related services;

(e) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (a) through (d) of this subsection. Services shall also be made available for juveniles who have been physically or sexually abused;

(f) A case management and coordination process, designed to assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and evaluation. Structured programming shall be scheduled for all juveniles. This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles if such programming is determined to be age and developmentally appropriate. The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; and

(g) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2020, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

(3) When the Office of Juvenile Services has arranged for treatment of a juvenile as provided in subsection (2) of this section, the office shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties, including any parent or guardian of the juvenile,

at least seven days before the placement of the juvenile is changed from the order of the committing court. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such change in placement and may order the change be stayed until the completion of the hearing. When filing a report and notice of placement change pursuant to this subsection, or upon a court order to set a hearing to review a change in placement or stay a change in placement pursuant to this subsection, the office may file a motion for immediate change of placement pursuant to subsection (4) of section 43-408.

(4)(a) The Office of Juvenile Services shall provide evidence-based services and operate the youth rehabilitation and treatment centers in accordance with evidence-based policies, practices, and procedures. On December 15 of each year, the office shall electronically submit to the Governor, the Legislature, and the Chief Justice of the Supreme Court, a comprehensive report of the evidence-based services, policies, practices, and procedures by which such centers operate, and efforts the office has taken to ensure fidelity to evidence-based models. The report may be attached to preexisting reporting duties. The report shall include at a minimum:

(i) The percentage of juveniles being supervised in accordance with evidence-based practices;

(ii) The percentage of state funds expended by each respective department for programs that are evidence-based, and a list of all programs which are evidence-based;

(iii) Specification of supervision policies, procedures, programs, and practices that were created, modified, or eliminated; and

(iv) Recommendations of the office for any additional collaboration with other state, regional, or local public agencies, private entities, or faith-based and community organizations.

(b) Each report and executive summary shall be available to the general public on the website of the office.

(c) The Executive Board of the Legislative Council may request the Consortium for Crime and Justice Research and Juvenile Justice Institute at the University of Nebraska at Omaha to review, study, and make policy recommendations on the reports assigned by the executive board.

Source: Laws 1994, LB 988, § 14; Laws 1997, LB 882, § 11; R.S.Supp.,1997, § 83-925.06; Laws 1998, LB 1073, § 39; Laws 2007, LB542, § 4; Laws 2013, LB561, § 29; Laws 2014, LB464, § 27; Laws 2020, LB1148, § 12; Laws 2020, LB1188, § 6; Laws 2021, LB273, § 3.

Cross References

Special Education Act, see section 79-1110.

43-408 Office of Juvenile Services; committing court; powers and duties; commitment review; hearing; immediate change of placement; procedure; annual review of commitment and placement; review status; when.

(1) Whenever any juvenile is committed to the Office of Juvenile Services, the juvenile shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(2) The committing court may order placement at a youth rehabilitation and treatment center for a juvenile committed to the Office of Juvenile Services following a commitment hearing pursuant to subdivision (1)(b)(iii) of section 43-286. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services, and the office shall provide the court and parties of record with the initial treatment plan and monthly updates regarding the progress of the juvenile.

(3) In addition to the hearings set forth in section 43-285, during a juvenile's term of commitment, any party may file a motion for commitment review to bring the case before the court for consideration of the juvenile's commitment to a youth rehabilitation and treatment center. A hearing shall be scheduled no later than thirty days after the filing of such motion. No later than five days prior to the hearing, the office shall provide information to the parties regarding the juvenile's individualized treatment plan and progress. A representative of the office or facility shall be physically present at the hearing to provide information to the court unless the court allows the representative to appear telephonically or by video. The juvenile and the juvenile's parent or guardian shall have the right to be physically present at the hearing. The court may enter such orders regarding the juvenile's care and treatment as are necessary and in the best interests of the juvenile, including an order for early discharge from commitment when appropriate. In entering an order for early discharge from commitment to intensive supervised probation in the community, the court shall consider to what extent:

(a) The juvenile has completed the goals of the juvenile's individualized treatment plan or received maximum benefit from institutional treatment;

(b) The juvenile would benefit from continued services under community supervision;

(c) The juvenile can function in a community setting with appropriate supports; and

(d) There is reason to believe that the juvenile will not commit further violations of law and will comply with the terms of intensive supervised probation.

(4) When filing a motion pursuant to subsection (3) of this section, the office may also file a motion for immediate change of placement to another youth rehabilitation and treatment center operated and utilized in compliance with state law. When filing a report and notice of placement change pursuant to subsection (3) of section 43-407, or upon a court order to set a hearing to review a change in placement or stay a change in placement pursuant to subsection (3) of section 43-407, the office may file a motion for immediate change of placement to the inpatient or subacute residential treatment facility licensed as a treatment facility in the State of Nebraska. The motion shall set forth with reasonable particularity the grounds for an immediate change of placement. A motion for immediate change of placement under this subsection shall be heard within twenty-four hours, excluding nonjudicial days, and may be heard telephonically or by videoconferencing. Prior to filing a motion for immediate change of placement, the office shall make a reasonable attempt to provide notice of the motion to the juvenile's parent or guardian, including notice that the motion will be set for hearing within twenty-four hours. The court shall promptly provide the notice of hearing to all parties of record. In advance of the hearing, the office shall provide to the other parties of record

any exhibits it intends to offer, if any, and the identity of its witnesses. The office shall provide the juvenile an opportunity before the hearing to consult with the juvenile's counsel and review the motion and the exhibits and witnesses. The court shall order the immediate change of placement pending an order pursuant to subsection (3) of this section or subsection (3) of section 43-407 if the court determines that an immediate change is in the best interests of the juvenile and further delay would be contrary to the juvenile's well-being, physical health, emotional health, or mental health.

(5) Each juvenile committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center shall also be entitled to an annual review of such commitment and placement for as long as the juvenile remains so committed and placed. At an annual review hearing, the court shall consider the factors described in subsection (3) of this section to assess the juvenile's progress and determine whether commitment remains in the best interests of the juvenile.

(6) If a juvenile is placed in detention while awaiting placement at a youth rehabilitation and treatment center and the placement has not occurred within fourteen days, the committing court shall hold a hearing every fourteen days to review the status of the juvenile. Placement of a juvenile in detention shall not be considered a treatment service.

Source: Laws 1996, LB 1044, § 962; R.S.Supp.,1996, § 83-925.12; Laws 1998, LB 1073, § 40; Laws 2001, LB 598, § 1; Laws 2006, LB 1113, § 40; Laws 2013, LB561, § 30; Laws 2020, LB1148, § 13; Laws 2020, LB1188, § 7; Laws 2021, LB273, § 4.

43-410 Juvenile absconding; authority to apprehend.

(1) Any peace officer or direct care staff member of the Office of Juvenile Services has the authority to apprehend and detain a juvenile who has absconded or is attempting to abscond from commitment to the Office of Juvenile Services and shall cause the juvenile to be returned to the youth rehabilitation and treatment center or an appropriate juvenile detention facility or staff secure juvenile facility.

(2) For purposes of this section, direct care staff member means any staff member charged with the day-to-day care and supervision of juveniles at a youth rehabilitation and treatment center or security staff who has received training in apprehension techniques and procedures.

Source: Laws 1998, LB 1073, § 42; Laws 2013, LB561, § 31; Laws 2020, LB1188, § 8.

43-414 Repealed. Laws 2020, LB1188, § 21.

43-415 Repealed. Laws 2020, LB1188, § 21.

43-416 Repealed. Laws 2020, LB1188, § 21.

43-417 Discharge from youth rehabilitation and treatment center; considerations.

In determining whether to discharge a juvenile from a youth rehabilitation and treatment center, the Office of Juvenile Services shall consider whether (1) the juvenile has completed the goals of his or her individualized treatment plan or received maximum benefit from institutional treatment, (2) the juvenile

would benefit from continued services under community supervision, (3) the juvenile can function in a community setting, (4) there is reason to believe that the juvenile will not commit further violations of law, and (5) there is reason to believe that the juvenile will comply with the conditions of probation.

Source: Laws 1998, LB 1073, § 49; Laws 2013, LB561, § 37; Laws 2020, LB1188, § 9.

43-418 Repealed. Laws 2020, LB1188, § 21.

43-419 Repealed. Laws 2020, LB1188, § 21.

43-420 Hearing officer; requirements.

Any hearing required or permitted for juveniles in the custody of the Office of Juvenile Services shall be conducted by a hearing officer who is an attorney licensed to practice law in the State of Nebraska and may be an employee of the Department of Health and Human Services or an attorney who is an independent contractor. If the hearing officer is an employee of the department, he or she shall not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office.

Source: Laws 1998, LB 1073, § 52; Laws 2013, LB561, § 40; Laws 2020, LB1188, § 10.

43-421 Repealed. Laws 2020, LB1188, § 21.

43-422 Repealed. Laws 2020, LB1188, § 21.

43-423 Repealed. Laws 2020, LB1188, § 21.

43-425 Community and Family Reentry Process; created; juvenile committed to youth rehabilitation and treatment center; family team meetings; individualized reentry plan; risk-screening and needs assessment; probation officer; duties; Office of Probation Administration; duties.

(1) The Community and Family Reentry Process is hereby created. This process is created in order to reduce recidivism and promote safe and effective reentry for the juvenile and his or her family to the community from the juvenile justice system.

(2) While a juvenile is committed to a youth rehabilitation and treatment center, family team meetings shall be conducted in person or via videoconferencing at least once per month with the juvenile's support system to discuss the juvenile's transition back to the community. A juvenile's support system should be made up of any of the following: The juvenile himself or herself, any immediate family members or guardians, informal and formal supports, the juvenile's guardian ad litem appointed by the court, the juvenile's probation officer, Office of Juvenile Services personnel employed by the facility, and any additional personnel as appropriate. Once developed, individualized reentry plans should be discussed at the family team meetings with the juvenile and other members of the juvenile's support system and shall include discussions on the juvenile's placement after leaving the facility. The probation officer and the Office of Juvenile Services personnel should discuss progress and needs of the juvenile and should help the juvenile follow his or her individual reentry plan to help with his or her transition back to the community.

(3) Within sixty days prior to discharge from a youth rehabilitation and treatment center, or as soon as possible if the juvenile's remaining time at the youth rehabilitation and treatment center is less than sixty days, an evidence-based risk screening and needs assessment should be conducted on the juvenile in order to determine the juvenile's risk of reoffending and the juvenile's individual needs upon reentering the community.

(4) Individualized reentry plans shall be developed with input from the juvenile and his or her support system in conjunction with a risk assessment process. Individualized reentry plans shall be finalized thirty days prior to the juvenile leaving the youth rehabilitation and treatment center or as soon as possible if the juvenile's remaining time at the center is less than thirty days. Individualized reentry plans should include specifics about the juvenile's placement upon return to the community, an education transition plan, a treatment plan with any necessary appointments being set prior to the juvenile leaving the center, and any other formal and informal supports for the juvenile and his or her family. The district probation officer and Office of Juvenile Services personnel shall review the individualized reentry plan and the expected outcomes as a result of the plan with the juvenile and his or her support system within thirty days prior to the juvenile's discharge from the center.

(5) The probation officer shall have contact with the juvenile and the juvenile's support system within forty-eight hours after the juvenile returns to the community and continue to assist the juvenile and the juvenile's support system in implementing and following the individualized reentry plan and monitoring the juvenile's risk through ongoing assessment updates.

(6) The Office of Probation Administration shall:

(a) Establish an evidence-based reentry process that utilizes risk assessment to determine the juvenile's supervision level upon return to the community;

(b) Establish supervision strategies based on risk levels of the juvenile and supervise accordingly, with ongoing reassessment to assist in determining eligibility for release from probation;

(c) Develop a formal matrix of graduated sanctions to be utilized prior to requesting the county attorney to file for probation revocation; and

(d) Provide training to its workers on risk-based supervision strategies, motivational interviewing, family engagement, community-based resources, and other evidence-based reentry strategies.

Source: Laws 2013, LB561, § 54; Laws 2014, LB464, § 29; Laws 2020, LB1188, § 11.

43-426 Visitation and communication; use as consequence or sanction; prohibited.

In-person visitation and other forms of communication, including telephone calls and electronic communication, with a juvenile's relatives, including, but not limited to, parents, guardians, grandparents, siblings, and children, shall not be limited or prohibited as a consequence or sanction.

Source: Laws 2020, LB1188, § 12.

43-427 Youth rehabilitation and treatment centers; five-year operations plan; reports.

(1) The Department of Health and Human Services shall develop a five-year operations plan for the youth rehabilitation and treatment centers and submit such operations plans electronically to the Health and Human Services Committee of the Legislature on or before March 15, 2021.

(2) The operations plan shall be developed with input from key stakeholders and shall include, but not be limited to:

(a) A description of the population served at each youth rehabilitation and treatment center;

(b) An organizational chart of supervisors and operations staff. The operations plan shall not allow for administrative staff to have oversight over more than one youth rehabilitation and treatment center and shall not allow for clinical staff to have responsibility over more than one youth rehabilitation and treatment center;

(c) Staff who shall be centralized offsite or managed onsite, including facility and maintenance staff;

(d) A facility plan that considers taxpayer investments already made in the facility and the community support and acceptance of the juveniles in the community surrounding the youth rehabilitation and treatment center;

(e) A description of each rehabilitation program offered at the youth rehabilitation and treatment center;

(f) A description of each mental health treatment plan offered at the youth rehabilitation and treatment center;

(g) A description of reentry and discharge planning;

(h) A staffing plan that ensures adequate staffing;

(i) An education plan developed in collaboration with the State Department of Education;

(j) A capital improvements budget;

(k) An operating budget;

(l) A disaster recovery plan;

(m) A plan to segregate the juveniles by gender on separate campuses;

(n) A parenting plan for juveniles placed in a youth rehabilitation and treatment center who are parenting;

(o) A statement of the rights of juveniles placed at the youth rehabilitation and treatment centers, including a right to privacy, and the rights of parents or guardians;

(p) Quality and outcome measurements for tracking outcomes for juveniles when they are discharged from the youth rehabilitation and treatment center, including an exit survey of such juveniles;

(q) Key performance indicators to be included in the annual report required under this section;

(r) A requirement for trauma-informed training provided to staff;

(s) Methods and procedures for investigations at the youth rehabilitation and treatment center; and

(t) A grievance process for juveniles placed at the youth rehabilitation and treatment centers.

(3) The department shall submit a report electronically to the Clerk of the Legislature on or before December 15, 2021, and each December 15 thereafter regarding such operations plan and key performance indicators.

(4) In addition to the report required in subsection (3) of this section, the department shall update the Health and Human Services Committee of the Legislature on or before each March 15, June 15, and September 15, regarding the elements of the operations plan described in subdivisions (a), (d), (e), (f), and (m) of subsection (2) of this section, of any substantial changes planned before the next report, and of any substantial changes that have occurred to such facilities or programs. Nothing in this subsection shall be construed to limit or prevent the department from acting in accordance with sections 43-428 to 43-430 in the event of an emergency.

Source: Laws 2020, LB1140, § 2; Laws 2021, LB428, § 1.

43-428 Youth rehabilitation and treatment center; emergency plan.

(1) The Department of Health and Human Services shall develop an emergency plan for the Youth Rehabilitation and Treatment Center-Geneva, the Youth Rehabilitation and Treatment Center-Kearney, and any other facility operated and utilized as a youth rehabilitation and treatment center in compliance with state law.

(2) Each emergency plan shall:

(a) Identify and designate temporary placement facilities for the placement of juveniles in the event a youth rehabilitation and treatment center must be evacuated due to an emergency as defined in section 43-403. The administrator of a proposed temporary placement facility shall consent to be designated as a temporary placement facility in the emergency plan. A criminal detention facility or a juvenile detention facility shall only be designated as a temporary placement facility pursuant to section 43-430;

(b) Identify barriers to implementation of an effective emergency plan, including necessary administrative or legislative changes;

(c) Include procedures for the Office of Juvenile Services to provide reliable, effective, and timely notification that an emergency plan is to be implemented to:

(i) Staff at the youth rehabilitation and treatment center where the emergency plan is implemented and the administrator and staff at the temporary placement facility;

(ii) Juveniles placed at the youth rehabilitation and treatment center;

(iii) Families and legal guardians of juveniles placed at the youth rehabilitation and treatment center;

(iv) The State Court Administrator, in a form and manner prescribed by the State Court Administrator;

(v) The committing court of each juvenile placed at the youth rehabilitation and treatment center;

(vi) The chairperson of the Health and Human Services Committee of the Legislature; and

(vii) The office of Public Counsel and the office of Inspector General of Nebraska Child Welfare;

(d) Detail the plan for transportation of juveniles to a temporary placement facility; and

(e) Include methods and schedules for implementing the emergency plan.

(3) Each emergency plan shall be developed on or before December 15, 2020.

Source: Laws 2020, LB1140, § 6.

43-429 Emergency plan; requirements.

(1) The Department of Health and Human Services shall ensure that the administrator of each temporary placement facility described in an emergency plan required under section 43-428 consents to the temporary placement of juveniles placed in such facility pursuant to the emergency plan. Prior to inclusion in an emergency plan as a temporary placement facility, the department and the administrator of the temporary placement facility shall agree on a cost-reimbursement plan for the temporary placement of juveniles at such facility.

(2) If an emergency plan required under section 43-428 is implemented, the Office of Juvenile Services shall, at least twenty-four hours prior to implementation, if practical, and otherwise within twenty-four hours after implementation of such emergency plan, notify the persons and entities listed in subdivision (2)(c) of section 43-428.

Source: Laws 2020, LB1140, § 7.

43-430 Criminal detention facility; juvenile detention facility; emergency use.

In the event of an emergency and only after all other temporary placement options have been exhausted, the Office of Juvenile Services may provide for the placement of a juvenile for a period not to exceed seven days at a criminal detention facility, if allowed by law, or a juvenile detention facility, as such terms are defined in section 83-4,125.

Source: Laws 2020, LB1140, § 8.

43-431 Transportation of juveniles; policies and procedures; applicable to private contractor.

Policies and procedures of the Department of Health and Human Services regarding the transportation of juveniles placed at the youth rehabilitation and treatment centers shall apply to any private contractor utilized by the Office of Juvenile Services to transport juveniles placed at the youth rehabilitation and treatment centers.

Source: Laws 2020, LB1140, § 10.

ARTICLE 5

ASSISTANCE FOR CERTAIN CHILDREN

Section

43-512.12 Title IV-D child support order; review by Department of Health and Human Services; when; noncustodial parent incarcerated; notice to parents.

(1) Child support orders in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed by the Department of Health and Human Services to determine whether to refer such orders to the county attorney or authorized attorney for filing of an application for modification. An order shall be reviewed by the department upon its own initiative or at the request of either parent when such review is required by Title IV-D of the federal Social Security Act, as amended. After review the department shall refer an order to a county attorney or authorized attorney when the verifiable financial information available to the department indicates:

(a) The present child support obligation varies from the Supreme Court child support guidelines pursuant to section 42-364.16 by more than the percentage, amount, or other criteria established by Supreme Court rule, and the variation is due to financial circumstances which have lasted at least three months and can reasonably be expected to last for an additional six months; or

(b) Health care coverage meeting the requirements of subsection (2) of section 42-369 is available to either party and the children do not have health care coverage other than the medical assistance program under the Medical Assistance Act.

Health care coverage cases may be modified within three years of entry of the order.

(2) Orders that are not addressed under subsection (1) of this section shall not be reviewed by the department if it has not been three years since the present child support obligation was ordered unless the requesting party demonstrates a substantial change in circumstances that is expected to last for the applicable time period established by subdivision (1)(a) of this section. Such substantial change in circumstances may include, but is not limited to, change in employment, earning capacity, or income or receipt of an ongoing source of income from a pension, gift, or lottery winnings. An order may be reviewed after one year if the department's determination after the previous review was not to refer to the county attorney or authorized attorney for filing of an application for modification because financial circumstances had not lasted or were not expected to last for the time periods established by subdivision (1)(a) of this section.

(3) Notwithstanding the time periods set forth in subdivision (1)(a) of this section, within fifteen business days of learning that a noncustodial parent will be incarcerated for more than one hundred eighty calendar days, the department shall send notice by first-class mail to both parents informing them of the right to request the state to review and, if appropriate, adjust the order. Such notice shall be sent to the incarcerated parent at the address of the facility at which the parent is incarcerated.

Source: Laws 1991, LB 715, § 13; Laws 1993, LB 523, § 8; Laws 1996, LB 1044, § 163; Laws 1997, LB 307, § 64; Laws 1997, LB 752, § 99; Laws 2006, LB 1248, § 54; Laws 2009, LB288, § 10; Laws 2010, LB712, § 25; Laws 2018, LB702, § 2.

Cross References

Medical Assistance Act, see section 68-901.

43-512.15 Title IV-D child support order; modification; when; procedures.

(1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. Incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1)(a) and (b) of section 43-512.12 exists.

(2) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(3) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

Source: Laws 1991, LB 715, § 16; Laws 1993, LB 523, § 10; Laws 1996, LB 1044, § 166; Laws 1997, LB 307, § 67; Laws 2004, LB 1207, § 39; Laws 2007, LB554, § 42; Laws 2008, LB1014, § 43; Laws 2009, LB288, § 11; Laws 2010, LB712, § 26; Laws 2018, LB702, § 3.

43-536 Child care reimbursement; market rate survey; adjustment of rate; participation in quality rating and improvement system; effect.

In determining the rate of reimbursement for child care, the Department of Health and Human Services shall conduct a market rate survey of the child care providers in the state. The department shall adjust the reimbursement rate for child care every odd-numbered year at a rate not less than the sixtieth percentile and not to exceed the seventy-fifth percentile of the current market rate survey, except that (1) nationally accredited child care providers may be reimbursed at higher rates, (2) an applicable child care or early childhood education program, as defined in section 71-1954, that is participating in the quality rating and improvement system and has received a rating of step three or higher under the Step Up to Quality Child Care Act may be reimbursed at higher rates based upon the program's quality scale rating under the quality rating and improvement system, and (3) for the fiscal year beginning on July 1, 2017, such rate may not be less than the fiftieth percentile or the rate for the immediately preceding fiscal year and for the fiscal year beginning on July 1, 2018, such rate may not be less than the sixtieth percentile for the last three quarters of the fiscal year or the rate for the fiscal year beginning on July 1, 2016.

Source: Laws 1995, LB 455, § 20; Laws 1996, LB 1044, § 174; Laws 1997, LB 307, § 69; Laws 1998, LB 1073, § 28; Laws 2003, LB 414, § 1; Laws 2007, LB296, § 123; Laws 2011, LB464, § 1; Laws 2013, LB507, § 14; Laws 2017, LB335, § 1.

Cross References

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

ARTICLE 9
CHILDREN COMMITTED TO THE DEPARTMENT

Section
43-906. Adoption; consent.
43-907. Assets; custody; records; expenditures; investments; social security benefits; department; duties.

43-906 Adoption; consent.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, the Department of Health and Human Services, or its duly authorized agent, may consent to the adoption of children committed to it upon the order of a juvenile court if the parental rights of the parents or of the mother of a child born out of wedlock have been terminated and if no father of a child born out of wedlock has timely asserted his paternity rights under section 43-104.02, or upon the relinquishment to such department by their parents or the mother and, if required under sections 43-104.08 to 43-104.24, the father of a child born out of wedlock. The parental rights of parents of a child born out of wedlock shall be determined pursuant to sections 43-104.05 and 43-104.08 to 43-104.24.

Source: Laws 1911, c. 62, § 7, p. 275; R.S.1913, § 7231; C.S.1922, § 6888; C.S.1929, § 83-506; R.S.1943, § 83-245; Laws 1947, c. 333, § 2, p. 1052; Laws 1955, c. 344, § 2, p. 1061; Laws 1967, c. 248, § 5, p. 658; Laws 1985, LB 255, § 36; Laws 1995, LB 712, § 27; Laws 1996, LB 1044, § 186; Laws 2007, LB247, § 21; Laws 2022, LB741, § 32.
Effective date July 21, 2022.

Cross References

Adoption, substitute consents, see sections 43-105 and 43-293.
Nebraska Indian Child Welfare Act, see section 43-1501.

43-907 Assets; custody; records; expenditures; investments; social security benefits; department; duties.

(1) Unless a guardian shall have been appointed by a court of competent jurisdiction, the Department of Health and Human Services shall take custody of and exercise general control over assets owned by children under the charge of the department. Children owning assets shall at all times pay for personal items. Assets over and above a maximum of one thousand dollars and current income shall be available for reimbursement to the state for the cost of care. Assets may be deposited in a checking account, invested in United States bonds, or deposited in a savings account insured by the United States Government. All income received from the investment or deposit of assets shall be credited to the individual child whose assets were invested or deposited. The department shall make and maintain detailed records showing all receipts, investments, and expenditures of assets owned by children under the charge of the department.

(2) When the Department of Health and Human Services serves as representative payee for a child beneficiary of social security benefits, the department shall provide:

(a) Notice to the child beneficiary, in an age-appropriate manner, and the child's guardian ad litem, that the department is acting as the child's representative payee for the purposes of receiving social security benefits, within thirty days after receiving the first social security benefit payment on behalf of the child;

(b) Notice to the juvenile court, at every review hearing regarding the child beneficiary after January 1, 2023, regarding the department's receipt and conservation of the child's social security benefits, that shall include:

(i) The total amount of social security benefit funds the department has received on behalf of the child beneficiary as of the review hearing; and

(ii) The total amount of social security benefit funds received on behalf of the child beneficiary that are currently conserved or unspent as of the review hearing; and

(c) All accounting records regarding the department's receipt, use, and conservation of the child's social security benefits, to the child beneficiary, the child's guardian ad litem or attorney, or the child's parent upon:

(i) Request from the child beneficiary, the child's guardian ad litem or attorney, or the child's parent; and

(ii) Termination of the department's role as the child beneficiary's representative payee.

(3) On or before October 1, 2023, the Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out subsection (2) of this section consistent with federal requirements regarding representative payees for social security beneficiaries.

Source: Laws 1963, c. 245, § 1, p. 739; Laws 1976, LB 545, § 1; Laws 1977, LB 312, § 6; Laws 1982, LB 828, § 1; Laws 1996, LB 1044, § 187; Laws 2007, LB296, § 125; Laws 2022, LB1173, § 8. Operative date July 21, 2022.

ARTICLE 12

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Section
43-1238. Initial child custody jurisdiction.

43-1238 Initial child custody jurisdiction.

(a) Except as otherwise provided in section 43-1241, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under subdivision (a)(1) of this section, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 43-1244 or 43-1245, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under subdivision (a)(1) or (a)(2) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 43-1244 or 43-1245; or

(4) no court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (a)(2), or (a)(3) of this section.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state. In addition to having jurisdiction to make judicial determinations about the custody and care of the child, a court of this state with exclusive jurisdiction under subsection (a) of this section has jurisdiction and authority to make factual findings regarding (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with at least one of the child's parents due to such abuse, abandonment, neglect, or a similar basis under state law, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence. If there is sufficient evidence to support such factual findings, the court shall issue an order containing such findings when requested by one of the parties or upon the court's own motion.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Source: Laws 2003, LB 148, § 13; Laws 2018, LB670, § 8.

ARTICLE 13

FOSTER CARE

(a) FOSTER CARE REVIEW ACT

Section

(b) TRANSITION OF EMPLOYEES

(a) FOSTER CARE REVIEW ACT

43-1302 Foster Care Review Office; established; purpose; Foster Care Advisory Committee; created; members; terms; meetings; duties; expenses; executive director; duties.

(1) The Foster Care Review Office is hereby established. The purpose of the office is to provide information and direct reporting to the courts, the Department of Health and Human Services, the Office of Probation Administration, and the Legislature regarding the foster care system in Nebraska; to provide oversight of the foster care system; and to make recommendations regarding foster care policy to the Legislature. The executive director of the Foster Care Review Office shall provide information and reporting services, provide analysis of information obtained, and oversee foster care file audit case reviews and tracking of cases of children in the foster care system. The executive director of the office shall, through information analysis and with the assistance of the Foster Care Advisory Committee, (a) determine key issues of the foster care system and ways to resolve the issues and to otherwise improve the system and (b) make policy recommendations.

(2)(a) The Foster Care Advisory Committee is created. The committee shall have five members appointed by the Governor. Three members shall be local board members, one member shall have data analysis experience, and one member shall be a resident of the state who is representative of the public at large. The members shall have no pecuniary interest in the foster care system and shall not be employed by the office, the Department of Health and Human Services, a county, a residential child-caring agency, a child-placing agency, or a court.

(b) The Health and Human Services Committee of the Legislature shall hold a confirmation hearing for the appointees, and the appointments shall be subject to confirmation by the Legislature, except that the members appointed while the Legislature is not in session shall serve until the next session of the Legislature, at which time a majority of the members of the Legislature shall approve or disapprove of the appointments.

(c) The terms of the members shall be for three years, except that the Governor shall designate two of the initial appointees to serve initial terms ending on March 1, 2014, and three of the initial appointees to serve initial terms ending on March 1, 2015. The Governor shall make the initial appointments within thirty days after July 1, 2012. Members shall not serve more than two consecutive terms, except that members shall serve until their successors have been appointed and qualified. The Governor shall appoint members to fill vacancies from the same category as the vacated position to serve for the remainder of the unexpired term.

(d) The Foster Care Advisory Committee shall meet at least four times each calendar year. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the committee. Members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(e) The duties of the Foster Care Advisory Committee are to:

(i) Hire and fire an executive director for the office who has training and experience in foster care; and

(ii) Support and facilitate the work of the office, including the tracking of children in foster care and reviewing foster care file audit case reviews.

(3) The executive director of the office shall hire, fire, and supervise office staff and shall be responsible for the duties of the office as provided by law,

including the annual report and other reporting, review, tracking, data collection and analysis, and oversight and training of local boards.

Source: Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133; Laws 2009, LB679, § 1; Laws 2012, LB998, § 4; Laws 2013, LB265, § 33; Laws 2015, LB265, § 8; Laws 2020, LB381, § 30.

43-1303 Office; registry; reports required; foster care file audit case reviews; rules and regulations; local board; report; court; report; visitation of facilities; executive director; powers and duties.

(1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a weekly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such report shall consist of identifying information, placement information, the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312, and information on whether any such child was a person immune from criminal prosecution under subsection (5) of section 28-801 or was considered a trafficking victim as defined in section 28-830. The department, the Office of Probation Administration, and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, date of birth, gender, race, religion, and ethnicity;

(b) Identification information for parents and stepparents, including name, address, and status of parental rights;

(c) Placement information, including (i) initial placement date, (ii) current placement date, (iii) the name and address of the foster care placement, (iv) if a relative placement or kinship placement, whether the foster care placement is licensed, and (v) whether the foster care placement has received a waiver pursuant to section 71-1904 and the basis for such waiver;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child; and

(f) Case worker, probation officer, or person providing direct case management or supervision functions.

(2)(a) The Foster Care Review Office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care placements. Such reports shall include, but not be limited to, (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) Accumulation of data and the making of quarterly reports regarding the children in foster care placements;

(vi) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vii) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4)(a) The office shall report and make recommendations to the Legislature, the department, the Office of Probation Administration, the courts, local boards, and county welfare offices.

(b) Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data.

(c) The Foster Care Review Office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements.

(d) The executive director of the office shall provide reports regarding child welfare and juvenile justice data and information on March 1, June 1, September 1, and December 1. The September 1 report shall be the annual report. The executive director shall provide additional reports at a time specified by the Health and Human Services Committee of the Legislature. The reports shall include issues, policy concerns, problems which have come to the attention of the office, and analysis of the data. The reports shall recommend alternatives to the identified problems and related needs of the foster care system. The reports and recommendations submitted to the Legislature shall be submitted electronically.

(e) The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature.

(5) The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met.

(6) At the request of any state agency, the executive director of the office or his or her designees from the office may conduct a case file review process and

data analysis regarding any state ward or ward of the court whether placed in-home or out-of-home at the time of the case file review.

Source: Laws 1982, LB 714, § 3; Laws 1990, LB 1222, § 6; Laws 1996, LB 1044, § 195; Laws 1998, LB 1041, § 36; Laws 1999, LB 240, § 1; Laws 2012, LB998, § 5; Laws 2013, LB222, § 10; Laws 2015, LB265, § 9; Laws 2015, LB294, § 16; Laws 2017, LB289, § 19; Laws 2018, LB840, § 1; Laws 2018, LB1078, § 2.

43-1306 Children and Juveniles Data Feasibility Study Advisory Group; created; members; meetings; duties; Data Steering Subcommittee; Information-Sharing Subcommittee.

(1) The Children and Juveniles Data Feasibility Study Advisory Group is created. The advisory group shall oversee a feasibility study to identify how existing state agency data systems currently used to account for the use of all services, programs, and facilities by children and juveniles in the State of Nebraska can be used to establish an independent, external data warehouse. The Foster Care Review Office shall provide administrative support for the feasibility study and the advisory group.

(2) The advisory group shall include the Inspector General of Nebraska Child Welfare or his or her designee, the State Court Administrator or his or her designee, the probation administrator of the Office of Probation Administration or his or her designee, the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee, the Commissioner of Education or his or her designee, the executive director of the Foster Care Review Office or his or her designee, the Chief Information Officer of the office of Chief Information Officer or his or her designee, and the chief executive officer of the Department of Health and Human Services or his or her designee.

(3) The advisory group shall:

(a) Meet at least twice a year;

(b) Carry out in good faith the duties provided in this section;

(c) Create a Data Steering Subcommittee. Each member of the advisory group shall designate one representative from his or her agency with specific technical knowledge of the agency's data structure, limitation, and capabilities to serve on the subcommittee. The subcommittee shall meet regularly to manage and discuss data-related items, including the technological and system issues of each agency's current data system, specific barriers that impact the implementation of a data warehouse, and steps necessary to establish and sustain a data warehouse. The subcommittee shall report its findings to the advisory group;

(d) Create an Information-Sharing Subcommittee. Each member of the advisory group shall designate one representative from his or her agency with specific knowledge of the agency's legal and regulatory responsibilities and restrictions related to sharing data to serve on the subcommittee. The subcommittee shall meet regularly to manage and discuss the legal and regulatory barriers to establishing a data warehouse and to identify possible solutions. The subcommittee shall report its findings to the advisory group; and

(e) Submit a written report electronically to the Legislature on October 1 of 2017 and 2018, detailing the technical and legal steps necessary to establish the Children and Juveniles Data Warehouse by July 1, 2019. The report to be

submitted on October 1, 2018, shall include the final results of the feasibility study to establish the data warehouse by July 1, 2019. The results of the feasibility study shall not be binding on any agency.

(4) For purposes of this section, independent, external data warehouse means a data system which allows for the collection, storage, and analysis of data from multiple agencies but is not solely controlled by the agencies providing the data.

(5) This section terminates on December 31, 2019.

Source: Laws 2017, LB225, § 5.

43-1311.02 Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties; right of sibling to intervene.

(1)(a) Reasonable efforts shall be made to place a child and the child's siblings in the same foster care placement or adoptive placement, unless such placement is contrary to the safety or well-being of any of the siblings. This requirement applies even if the custody orders of the siblings are made at separate times and even if the children have no preexisting relationship.

(b) If the siblings are not placed together in a joint-sibling placement, the Department of Health and Human Services shall provide the siblings and the court with the reasons why a joint-sibling placement would be contrary to the safety or well-being of any of the siblings.

(2) When siblings are not placed together in a joint-sibling placement, the department shall make a reasonable effort to provide for frequent sibling visitation or ongoing interaction between the child and the child's siblings unless the department provides the siblings and the court with reasons why such sibling visitation or ongoing interaction would be contrary to the safety or well-being of any of the siblings. The court shall determine the type and frequency of sibling visitation or ongoing interaction to be implemented by the department. The court shall make a determination as to whether reasonable efforts have been made by the department to facilitate sibling placement and sibling visitation or other ongoing interaction and whether such placement and visitation or other ongoing interaction is contrary to the safety or well-being of any of the siblings.

(3) The department shall file a written sibling placement report as required by subsection (3) of section 43-285. Such a report shall include the reasonable efforts of the department to locate the child's siblings and, if a joint-sibling placement is made, whether such placement continues to be consistent with the safety and well-being of the children. If joint-sibling placement is not possible, the report shall include the reasons why a joint-sibling placement is and continues to be contrary to the safety or well-being of any of the siblings, the department's continuing reasonable efforts to place a child with a sibling in the same foster care or adoptive placement, and the department's continuing reasonable efforts to facilitate sibling visitation.

(4) Parties to the case, including a child's sibling, may file a motion for joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(5) The court shall periodically review and evaluate the effectiveness and appropriateness of the joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(6) If an order is entered for termination of parental rights of siblings who are subject to this section, unless the court has suspended or terminated joint-sibling placement, sibling visitation, or ongoing interaction between siblings, the department shall make reasonable efforts to make a joint-sibling placement or do all of the following to facilitate frequent sibling visitation or ongoing interaction between the child and the child's siblings when the child is adopted or enters a permanent placement: (a) Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships; (b) provide prospective adoptive parents with information regarding the child's siblings; and (c) encourage prospective adoptive parents to plan for facilitating post-adoption contact between the child and the child's siblings.

(7) Any information regarding court-ordered or authorized joint-sibling placement, sibling visitation, or ongoing interaction between siblings shall be provided by the department to the parent or parents if parental rights have not been terminated unless the court determines that doing so would be contrary to the safety or well-being of the child and to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the sibling time.

(8) For purposes relative to the administration of the federal foster care program and the state plans pursuant to Title IV-B and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2015, the term sibling means an individual considered to be a sibling under Nebraska law or an individual who would have been considered a sibling but for a termination of parental rights or other disruption of parental rights such as death of a parent.

(9) A sibling of a child under the jurisdiction of the court shall have the right to intervene at any point in the proceedings for the limited purpose of seeking joint-sibling placement, sibling visitation, or ongoing interaction with their sibling.

(10) This section shall not be construed to subordinate the rights of foster or adoptive parents of a child to the rights of the parents of a sibling of that child or to subordinate the rights of an adoptive, foster, or biological parent to the rights of a child seeking sibling placement or visitation.

Source: Laws 2011, LB177, § 7; Laws 2015, LB296, § 2; Laws 2018, LB1078, § 3.

43-1311.03 Written independent living transition proposal; development; contents; transition team; department; duties; information regarding Young Adult Bridge to Independence Act; notice; contents.

(1) When a child placed in foster care turns fourteen years of age or enters foster care and is at least fourteen years of age, a written independent living transition proposal shall be developed by the Department of Health and Human Services at the direction and involvement of the child to prepare for the transition from foster care to successful adulthood. Any revision or addition to such proposal shall also be made in consultation with the child. The transition proposal shall be personalized based on the child's needs and shall describe the services needed for the child to transition to a successful adulthood as provided in the Nebraska Strengthening Families Act. The transition proposal shall

include, but not be limited to, the following needs and the services needed for the child to transition to a successful adulthood as provided in the Nebraska Strengthening Families Act:

(a) Education;

(b) Employment services and other workforce support;

(c) Health and health care coverage, including the child's potential eligibility for medicaid coverage under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;

(d) Behavioral health treatment and support needs and access to such treatment and support;

(e) Financial assistance, including education on credit card financing, banking, and other services;

(f) Housing;

(g) Relationship development and permanent connections;

(h) Adult services, if the needs assessment indicates that the child is reasonably likely to need or be eligible for services or other support from the adult services system; and

(i) Information, planning, and assistance to obtain a driver's license as allowed under state law and consistent with subdivision (9)(b)(iv) of this section, including, but not limited to, providing the child with a copy of a driver's manual, identifying driver safety courses and resources to access a driver safety course, and identifying potential means by which to access a motor vehicle for such purposes.

(2) The transition proposal shall be developed and frequently reviewed by the department in collaboration with the child's transition team. The transition team shall be comprised of the child, the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals who have knowledge of services available to the child. As provided in the Nebraska Strengthening Families Act, one of the individuals selected by the child may be designated as the child's advisor and, as necessary, advocate for the child with respect to the application of the reasonable and prudent parent standard and for the child on normalcy activities. The department may reject an individual selected by the child to be a member of the team if the department has good cause to believe the individual would not act in the best interests of the child.

(3) The transition proposal shall be considered a working document and shall be, at the least, updated for and reviewed at every permanency or review hearing by the court. The court shall determine whether the transition proposal includes the services needed to assist the child to make the transition from foster care to a successful adulthood.

(4) The transition proposal shall document what efforts were made to involve and engage the child in the development of the transition proposal and any revisions or additions to the transition proposal. As provided in the Nebraska Strengthening Families Act, the court shall ask the child, in an age or developmentally appropriate manner, about his or her involvement in the development of the transition proposal and any revisions or additions to such proposal. As provided in the Nebraska Strengthening Families Act, the court shall make a finding as to the child's involvement in the development of the transition proposal and any revisions or additions to such proposal.

(5) The final transition proposal prior to the child's leaving foster care shall specifically identify how the need for housing will be addressed.

(6) If the child is interested in pursuing higher education, the transition proposal shall provide for the process in applying for any applicable state, federal, or private aid.

(7) The department shall provide without cost a copy of any consumer report as defined in 15 U.S.C. 1681a(d), as such section existed on January 1, 2016, pertaining to the child each year until the child is discharged from care and assistance, including when feasible, from the child's guardian ad litem, in interpreting and resolving any inaccuracies in the report as provided in the Nebraska Strengthening Families Act.

(8)(a) Any child who is adjudicated to be a juvenile described in (i) subdivision (3)(a) of section 43-247 and who is in an out-of-home placement or (ii) subdivision (8) of section 43-247 and whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after the child had attained the age of sixteen years, shall receive information regarding the Young Adult Bridge to Independence Act and the bridge to independence program available under the act.

(b) The department shall create a clear and developmentally appropriate written notice discussing the rights of eligible young adults to participate in the program. The notice shall include information about eligibility and requirements to participate in the program, the extended services and support that young adults are eligible to receive under the program, and how young adults can be a part of the program. The notice shall also include information about the young adult's right to request a client-directed attorney to represent the young adult pursuant to section 43-4510 and the benefits and role of an attorney.

(c) The department shall disseminate this information to any child who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and who is in an out-of-home placement at sixteen years of age and any child who was adjudicated to be a juvenile under subdivision (8) of section 43-247 and whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after the child had attained the age of sixteen years. The department shall disseminate this information to any such child yearly thereafter until such child attains the age of nineteen years and not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living. In addition to providing the written notice, not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living, a representative of the department shall explain the information contained in the notice to the child in person and the timeline necessary to avoid a lapse in services and support.

(9)(a) The department shall provide the child with the documents, information, records, and other materials described in subdivision (9)(b) of this section, (i) if the child is leaving foster care, on or before the date the child reaches eighteen or nineteen years of age or twenty-one years of age if the child participates in the bridge to independence program, and (ii) at the age or as otherwise prescribed in subdivision (9)(b) of this section.

(b) The department shall provide the child with:

(i) A certified copy of the child's birth certificate and facilitate securing a federal social security card when the child is eligible for such card;

(ii) Health insurance information and all documentation required for enrollment in medicaid coverage for former foster care children as available under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;

(iii) A copy of the child's medical records;

(iv) A driver's license or identification card issued by a state in accordance with the requirements of section 202 of the REAL ID Act of 2005, as such section existed on January 1, 2016, and when requested by a child fourteen years of age or older, all documents necessary to obtain such license or card;

(v) A copy of the child's educational records;

(vi) A credit report check;

(vii) Contact information, with permission, for family members, including siblings, with whom the child can maintain a safe and appropriate relationship, and other supportive adults;

(viii) A list of local community resources, including, but not limited to, support groups, health clinics, mental and behavioral health and substance abuse treatment services and support, pregnancy and parenting resources, and employment and housing agencies;

(ix) Written information, including, but not limited to, contact information, for disability resources or benefits that may assist the child as an adult, specifically including information regarding state programs established pursuant to 42 U.S.C. 677, as such section existed on January 1, 2016, and disability benefits, including supplemental security income pursuant to 42 U.S.C. 1382 et seq., as such sections existed on January 1, 2016, or social security disability insurance pursuant to 42 U.S.C. 423, as such section existed on January 1, 2016, if the child may be eligible as an adult;

(x) An application for public assistance and information on how to access the system to determine public assistance eligibility;

(xi) A letter prepared by the department that verifies the child's name and date of birth, dates the child was in foster care, and whether the child was in foster care on his or her eighteenth, nineteenth, or twenty-first birthday and enrolled in medicaid while in foster care;

(xii) Written information about the child's Indian heritage or tribal connection, if any; and

(xiii) Written information on how to access personal documents in the future.

(c) All fees associated with securing the certified copy of the child's birth certificate or obtaining a driver's license or a state identification card shall be waived by the state.

(d) The transition proposal shall document that the child was provided all of the documents listed in this subsection. The court shall make a finding as to whether the child has received the documents as part of the independence hearing as provided in subdivision (2)(d) of section 43-285.

Source: Laws 2011, LB177, § 8; Laws 2013, LB216, § 17; Laws 2013, LB269, § 3; Laws 2014, LB853, § 25; Laws 2016, LB746, § 19; Laws 2019, LB600, § 2; Laws 2020, LB219, § 1.

Cross References

Nebraska Strengthening Families Act, see section 43-4701.
Young Adult Bridge to Independence Act, see section 43-4501.

43-1318 Act, how cited.

Sections 43-1301 to 43-1321 shall be known and may be cited as the Foster Care Review Act.

Source: Laws 1982, LB 714, § 18; Laws 1996, LB 642, § 2; Laws 1998, LB 1041, § 44; Laws 2007, LB457, § 2; Laws 2011, LB177, § 9; Laws 2014, LB908, § 7; Laws 2015, LB265, § 15; Laws 2017, LB225, § 6.

(b) TRANSITION OF EMPLOYEES

43-1322 Repealed. Laws 2017, LB225, § 20.

ARTICLE 14

PARENTAL SUPPORT AND PATERNITY

Section
43-1411. Paternity; action to establish; venue; limitation; summons; person claiming to be biological father; action to establish; genetic testing.
43-1411.01. Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

43-1411 Paternity; action to establish; venue; limitation; summons; person claiming to be biological father; action to establish; genetic testing.

(1) A civil proceeding to establish the paternity of a child may be instituted, in the court of the district where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act, where the alleged father is domiciled, by:

(a) The mother or the alleged father of such child, either during pregnancy or within four years after the child's birth, unless:

(i) A valid consent or relinquishment has been made pursuant to sections 43-104.08 to 43-104.24 or section 43-105 for purposes of adoption; or

(ii) A county court or separate juvenile court has jurisdiction over the custody of the child or jurisdiction over an adoption matter with respect to such child pursuant to sections 43-101 to 43-116; or

(b) The guardian or next friend of such child or the state, either during pregnancy or within eighteen years after the child's birth.

(2) Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

(3) Notwithstanding any other provision of law, a person claiming to be the biological father of a child over which the juvenile court already has jurisdiction may file a complaint to intervene in such juvenile proceeding to institute an action to establish the paternity of the child. The complaint to intervene shall be accompanied by an affidavit under oath that the affiant believes he is the biological father of the juvenile. No filing fee shall be charged for filing the complaint and affidavit. Upon filing of the complaint and affidavit, the juvenile court shall enter an order pursuant to section 43-1414 to require genetic testing

and to require the juvenile to be made available for genetic testing. The costs of genetic testing shall be paid by the intervenor, the county, or the state at the discretion of the juvenile court. This subsection does not authorize intervention by a person whose parental rights to such child have been terminated by the order of any court of competent jurisdiction.

Source: Laws 1941, c. 81, § 11, p. 325; C.S.Supp.,1941, § 43-711; R.S. 1943, § 13-111; R.S.1943, (1983), § 13-111; Laws 1985, Second Spec. Sess., LB 7, § 75; Laws 1986, LB 813, § 1; Laws 1991, LB 457, § 16; Laws 1993, LB 500, § 54; Laws 1994, LB 1224, § 59; Laws 1995, LB 712, § 29; Laws 1998, LB 1041, § 45; Laws 2007, LB247, § 22; Laws 2020, LB93, § 1; Laws 2022, LB741, § 33. Effective date July 21, 2022.

Cross References

Uniform Interstate Family Support Act, see section 42-701.

43-1411.01 Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

(1) An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a complaint with the clerk of the district court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

(2) Whenever termination of parental rights is placed in issue in any case arising under sections 43-1401 to 43-1418, the Nebraska Juvenile Code and the Parenting Act shall apply to such proceedings.

(3) The court may stay the paternity action if there is a pending criminal allegation of sexual assault under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 against the alleged father with regard to the conception of the child.

Source: Laws 1997, LB 229, § 38; Laws 1998, LB 1041, § 46; Laws 2004, LB 1207, § 40; Laws 2008, LB1014, § 46; Laws 2013, LB561, § 44; Laws 2017, LB289, § 20.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Parenting Act, see section 43-2920.

ARTICLE 16
CHILD SUPPORT REFEREES

Section
43-1609. Child support referee; appointment; when; qualifications; oath or affirmation; removal; contracts authorized.
43-1611. Support and paternity matters; protection orders; referral or assignment.

43-1609 Child support referee; appointment; when; qualifications; oath or affirmation; removal; contracts authorized.

(1) Child support referees shall be appointed when necessary by the district courts, separate juvenile courts, and county courts to meet the requirements of

federal law relating to expediting the establishment, modification, enforcement, and collection of child, spousal, or medical support and protection orders issued under section 42-924.

(2) Child support referees shall be appointed by order of the district court, separate juvenile court, or county court. The Supreme Court shall appoint child support referees to serve more than one judicial district if the Supreme Court determines it is necessary.

(3) To be qualified for appointment as a child support referee, a person shall be an attorney in good standing admitted to the practice of law in the State of Nebraska and shall meet any other requirements imposed by the Supreme Court. A child support referee shall be sworn or affirmed to well and faithfully hear and examine the cause and to make a just and true report according to the best of his or her understanding. The oath or affirmation may be administered by a district, county, or separate juvenile court judge. A child support referee may be removed at any time by the appointing court.

(4) The Supreme Court may contract with an attorney to perform the duties of a referee for a specific case or for a specific amount of time or may direct a judge of the county court to perform such duties.

Source: Laws 1989, LB 265, § 2; Laws 1991, LB 715, § 21; Laws 2008, LB1014, § 49; Laws 2017, LB289, § 21.

43-1611 Support and paternity matters; protection orders; referral or assignment.

A district court, separate juvenile court, or county court may by rule or order refer or assign any and all matters regarding the establishment, modification, enforcement, and collection of child, spousal, or medical support, paternity matters, and protection orders issued under section 42-924 to a child support referee for findings and recommendations.

Source: Laws 1989, LB 265, § 4; Laws 1991, LB 715, § 23; Laws 2008, LB1014, § 51; Laws 2017, LB289, § 22.

ARTICLE 19

CHILD ABUSE PREVENTION

Section

43-1903 Nebraska Child Abuse Prevention Fund Board; created; members; terms; vacancies; officers; expenses; removal.

(1) There is hereby created within the department the Nebraska Child Abuse Prevention Fund Board which shall be composed of nine members as follows: Two representatives of the Department of Health and Human Services appointed by the chief executive officer and seven members to be appointed by the Governor with the approval of the Legislature. The Governor shall appoint two members from each of the three congressional districts and one member from the state at large. As a group, the appointed board members (a) shall demonstrate knowledge in the area of child abuse and neglect prevention, (b) shall be representative of the demographic composition of this state, and (c) to the

extent practicable, shall be representative of all of the following categories (i) the business community, (ii) the religious community, (iii) the legal community, (iv) professional providers of child abuse and neglect prevention services, and (v) volunteers in child abuse and neglect prevention services.

(2) The term of each appointed board member shall be three years, except that of the board members first appointed, two, including the at-large member, shall serve for three years, three shall serve for two years, and two shall serve for one year. The Governor shall designate the term which each of the members first appointed shall serve when he or she makes the appointments. An appointed board member shall not serve more than two consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The board shall elect a chairperson from among the appointed board members who shall serve for a term of two years. The board may elect the other officers and establish committees as it deems appropriate.

(4) The members of the board shall not receive any compensation for their services but shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. The reimbursement shall be paid from the fund. In any one fiscal year, no more than five percent of the annually available funds as provided in section 43-1906 shall be used for the purpose of reimbursement of board members.

(5) Any board member may be removed by the Governor for misconduct, incompetency, or neglect of duty after first being given the opportunity to be heard in his or her own behalf.

Source: Laws 1986, LB 333, § 3; Laws 1996, LB 1044, § 207; Laws 2007, LB296, § 133; Laws 2020, LB381, § 31.

43-1906 Nebraska Child Abuse Prevention Fund; established; investment; use.

(1) There is hereby established the Nebraska Child Abuse Prevention Fund. The additional child abuse prevention fee as provided in section 33-106.03, the additional charge for supplying a certified copy of the record of any birth as provided in sections 71-612, 71-617.15, 71-627, and 71-628, and all amounts which may be received from grants, gifts, bequests, the federal government, or other sources granted or given for the purposes specified in sections 43-1901 to 43-1906 shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund. The fund shall be administered and disbursed by the department.

(2) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) In any one fiscal year, no more than twenty percent of the annually appropriated funds shall be disbursed to any one agency, organization, or individual.

(4) Funds allocated from the fund shall only be used for purposes authorized under sections 43-1901 to 43-1906 and shall not be used to supplant any

existing governmental program or service. No grants may be made to any state department or agency.

Source: Laws 1986, LB 333, § 6; Laws 1995, LB 7, § 39; Laws 2002, LB 1310, § 4; Laws 2002, Second Spec. Sess., LB 48, § 2; Laws 2017, LB307, § 4.

Cross References

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

ARTICLE 21
AGE OF MAJORITY

Section
43-2101. Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.

43-2101 Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.

(1) All persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends.

(2) Upon becoming the age of majority, a person is considered an adult and acquires all rights and responsibilities granted or imposed by statute or common law, except that a person:

(a) Eighteen years of age or older and who is not a ward of the state may:

(i) Enter into a binding contract or lease of whatever kind or nature and shall be legally responsible for such contract or lease, including legal responsibility to third parties;

(ii) Execute, sign, authorize, or otherwise authenticate (A) an effective financing statement, (B) a promissory note or other instrument evidencing an obligation to repay, or (C) a mortgage, trust deed, security agreement, financing statement, or other security instrument to grant a lien or security interest in real or personal property or fixtures, and shall be legally responsible for such document, including legal responsibility to third parties; and

(iii) Acquire or convey title to real property and shall have legal responsibility for such acquisition or conveyance, including legal responsibility to third parties; and

(b) Eighteen years of age or older may consent to mental health services for himself or herself without the consent of his or her parent or guardian.

Source: R.S.1866, c. 23, § 1, p. 178; R.S.1913, § 1627; Laws 1921, c. 247, § 1, p. 853; C.S.1922, § 1576; C.S.1929, § 38-101; R.S.1943, § 38-101; Laws 1965, c. 207, § 1, p. 613; Laws 1969, c. 298, § 1, p. 1072; Laws 1972, LB 1086, § 1; R.S.1943, (1984), § 38-101; Laws 1988, LB 790, § 6; Laws 2010, LB226, § 2; Laws 2018, LB982, § 1; Laws 2019, LB55, § 5.

Cross References

Juvenile committed under Nebraska Juvenile Code, marriage under age of nineteen years does not make juvenile age of majority, see section 43-289.

ARTICLE 22
FAMILY FINDING SERVICES

Section
43-2204. Pilot project; created; department; duties; termination of project.

43-2204 Pilot project; created; department; duties; termination of project.

A pilot project is created to provide family finding services within at least two service areas. The department shall contract with providers of family finding services to carry out the family finding services pilot project. A provider may contract within multiple service areas. Each contracting provider shall be trained in and implement the steps described in section 43-2203. The family finding services pilot project shall terminate on June 30, 2019.

Source: Laws 2015, LB243, § 4; Laws 2022, LB1173, § 9.
Operative date July 21, 2022.

ARTICLE 24
JUVENILE SERVICES

Section
43-2401. Act, how cited.
43-2404.01. Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.
43-2404.02. Community-based Juvenile Services Aid Program; created; use; reports.
43-2409. Eligible applicants; performance review; commission; powers; use of grants; limitation.
43-2411. Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.
43-2412. Coalition; powers and duties.
43-2413. Repealed. Laws 2018, LB670, § 21.

43-2401 Act, how cited.

Sections 43-2401 to 43-2412 shall be known and may be cited as the Juvenile Services Act.

Source: Laws 1990, LB 663, § 1; Laws 2000, LB 1167, § 40; Laws 2001, LB 640, § 2; Laws 2018, LB670, § 9.

43-2404.01 Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.

(1) To be eligible for participation in either the Commission Grant Program or the Community-based Juvenile Services Aid Program, a comprehensive juvenile services plan shall be developed, adopted, and submitted to the commission in accordance with the federal act and rules and regulations adopted and promulgated by the commission in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, and the University of Nebraska at Omaha, Juvenile Justice Institute. Such plan may be developed by eligible applicants for the Commission Grant Program and by individual counties, by multiple counties, by federally recognized or state-recognized Indian tribes, or by any combination of the three for the Communi-

ty-based Juvenile Services Aid Program. Comprehensive juvenile services plans shall:

(a) Be developed by a comprehensive community team representing juvenile justice system stakeholders;

(b) Be based on data relevant to juvenile and family issues, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system;

(c) Identify policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes;

(d) Identify clear implementation strategies; and

(e) Identify how the impact of the program or service will be measured.

(2) Any portion of the comprehensive juvenile services plan dealing with administration, procedures, and programs of the juvenile court shall not be submitted to the commission without the concurrence of the presiding judge or judges of the court or courts having jurisdiction in juvenile cases for the geographic area to be served. Programs or services established by such plans shall conform to the family policy tenets prescribed in sections 43-532 and 43-533 and shall include policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes.

(3) The commission, in consultation with the University of Nebraska at Omaha, Juvenile Justice Institute, shall contract for the development and administration of a statewide system to monitor and evaluate the effectiveness of plans and programs receiving funds from (a) the Commission Grant Program and (b) the Community-based Juvenile Services Aid Program in preventing persons from entering the juvenile justice system and in rehabilitating juvenile offenders, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(4) There is established within the commission the position of Director of the Community-based Juvenile Services Aid Program, appointed by the executive director of the commission. The director shall have extensive experience in developing and providing community-based services.

(5) The director shall be supervised by the executive director of the commission. The director shall:

(a) Provide technical assistance and guidance for the development of comprehensive juvenile services plans;

(b) Coordinate the review of the Community-based Juvenile Services Aid Program application as provided in section 43-2404.02 and make recommendations for the distribution of funds provided under the Community-based Juvenile Services Aid Program, giving priority to those grant applications funding programs and services that will divert juveniles from the juvenile justice system, impact and effectively treat juveniles within the juvenile justice system, and

reduce the juvenile detention population or assist juveniles in transitioning from out-of-home placements to in-home treatments. The director shall ensure that no funds appropriated or distributed under the Community-based Juvenile Services Aid Program are used for purposes prohibited under subsection (3) of section 43-2404.02;

(c) Develop data collection and evaluation protocols, oversee statewide data collection, and generate an annual report on the effectiveness of juvenile services that receive funds from the Community-based Juvenile Services Aid Program, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system;

(d) Develop relationships and collaborate with juvenile justice system stakeholders, provide education and training as necessary, and serve on boards and committees when approved by the commission;

(e) Assist juvenile justice system stakeholders in developing policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system;

(f) Develop and coordinate a statewide working group as a subcommittee of the coalition to assist in regular strategic planning related to supporting, funding, monitoring, and evaluating the effectiveness of plans and programs receiving funds from the Community-based Juvenile Services Aid Program; and

(g) Work with the coalition in facilitating the coalition's obligations under the Community-based Juvenile Services Aid Program.

Source: Laws 2001, LB 640, § 6; Laws 2005, LB 193, § 1; Laws 2013, LB561, § 47; Laws 2016, LB746, § 21; Laws 2018, LB670, § 10.

43-2404.02 Community-based Juvenile Services Aid Program; created; use; reports.

(1) There is created a separate and distinct budgetary program within the commission to be known as the Community-based Juvenile Services Aid Program. Funding acquired from participation in the federal act, state General Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid in the establishment and provision of community-based services for juveniles who come in contact with the juvenile justice system.

(2)(a) Ten percent of the annual General Fund appropriation to the Community-based Juvenile Services Aid Program, excluding administrative budget funds, shall be set aside for the development of a common data set and evaluation of the effectiveness of the Community-based Juvenile Services Aid Program. The intent in creating this common data set is to allow for evaluation of the use of the funds and the effectiveness of the programs or outcomes in the Community-based Juvenile Services Aid Program.

(b) The common data set shall be developed and maintained by the commission and shall serve as a primary data collection site for any intervention funded by the Community-based Juvenile Services Aid Program designed to serve juveniles and deter involvement in the formal juvenile justice system. The commission shall work with agencies and programs to enhance existing data sets. To ensure that the data set permits evaluation of recidivism and other measures, the commission shall work with the Office of Probation Administration, juvenile diversion programs, law enforcement, the courts, and others to compile data that demonstrates whether a youth has moved deeper into the juvenile justice system. The University of Nebraska at Omaha, Juvenile Justice Institute, shall assist with the development of common definitions, variables, and training required for data collection and reporting into the common data set by juvenile justice programs. The common data set maintained by the commission shall be provided to the University of Nebraska at Omaha, Juvenile Justice Institute, to assess the effectiveness of the Community-based Juvenile Services Aid Program.

(c) Providing the commission access to records and information for, as well as the commission granting access to records and information from, the common data set is not a violation of confidentiality provisions under any law, rule, or regulation if done in good faith for purposes of evaluation. Records and documents, regardless of physical form, that are obtained or produced or presented to the commission for the common data set are not public records for purposes of sections 84-712 to 84-712.09.

(d) The ten percent of the annual General Fund appropriation to the Community-based Juvenile Services Aid Program, excluding administrative budget funds, shall be appropriated as follows: In fiscal year 2015-16, seven percent shall go to the commission for development of the common data set and three percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation. In fiscal year 2016-17, six percent shall go to the commission for development and maintenance of the common data set and four percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation. Every fiscal year thereafter, beginning in fiscal year 2017-18, five percent shall go to the commission for development and maintenance of the common data set and five percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation.

(e) The remaining funds in the annual General Fund appropriation to the Community-based Juvenile Services Aid Program shall be apportioned as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county and federally recognized or state-recognized Indian tribe who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from the county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three which is receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.

(3)(a) In distributing funds provided under the Community-based Juvenile Services Aid Program, aid recipients shall prioritize programs and services that will divert juveniles from the juvenile justice system, reduce the population of

juveniles in juvenile detention and secure confinement, and assist in transitioning juveniles from out-of-home placements.

(b) Funds received under the Community-based Juvenile Services Aid Program shall be used exclusively to assist the aid recipient in the implementation and operation of programs or the provision of services identified in the aid recipient's comprehensive juvenile services plan, including programs for local planning and service coordination; screening, assessment, and evaluation; diversion; alternatives to detention; family support services; treatment services; truancy prevention and intervention programs; pilot projects approved by the commission; payment of transportation costs to and from placements, evaluations, or services; personnel when the personnel are aligned with evidence-based treatment principles, programs, or practices; contracting with other state agencies or private organizations that provide evidence-based treatment or programs; preexisting programs that are aligned with evidence-based practices or best practices; and other services that will positively impact juveniles and families in the juvenile justice system.

(c) Funds received under the Community-based Juvenile Services Aid Program may be used one time by an aid recipient:

(i) To convert an existing juvenile detention facility or other existing structure for use as an alternative to detention as defined in section 43-245;

(ii) To invest in capital construction, including both new construction and renovations, for a facility for use as an alternative to detention; or

(iii) For the initial lease of a facility for use as an alternative to detention.

(d) Funds received under the Community-based Juvenile Services Aid Program shall not be used for the following:

(i) Construction of secure detention facilities, secure youth treatment facilities, or secure youth confinement facilities;

(ii) Capital construction or the lease or acquisition of facilities beyond the one-time use described in subdivision (3)(c) of this section;

(iii) Programs, services, treatments, evaluations, or other preadjudication services that are not based on or grounded in evidence-based practices, principles, and research, except that the commission may approve pilot projects that authorize the use of such aid; or

(iv) Office equipment, office supplies, or office space.

(e) Any aid not distributed to counties under this subsection shall be retained by the commission to be distributed on a competitive basis under the Community-based Juvenile Services Aid Program for a county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three demonstrating additional need in the funding areas identified in this subsection.

(f) If a county, multiple counties, or a federally recognized or state-recognized Indian tribe or tribes is denied aid under this section or receives no aid under this section, the entity may request an appeal pursuant to the appeal process in rules and regulations adopted and promulgated by the commission. The commission shall establish appeal and hearing procedures by December 15, 2014. The commission shall make appeal and hearing procedures available on its website.

(4)(a) Any recipient of aid under the Community-based Juvenile Services Aid Program shall electronically file an annual report as required by rules and regulations adopted and promulgated by the commission. Any program funded through the Community-based Juvenile Services Aid Program that served juveniles shall report data on the individual youth served. Any program that is not directly serving youth shall include program-level data. In either case, data collected shall include, but not be limited to, the following: The type of juvenile service, how the service met the goals of the comprehensive juvenile services plan, demographic information on the juveniles served, program outcomes, the total number of juveniles served, and the number of juveniles who completed the program or intervention.

(b) Any recipient of aid under the Community-based Juvenile Services Aid Program shall be assisted by the University of Nebraska at Omaha, Juvenile Justice Institute, in reporting in the common data set, as set forth in the rules and regulations adopted and promulgated by the commission. Community-based aid utilization and evaluation data shall be stored and maintained by the commission.

(c) Evaluation of the use of funds and the evidence of the effectiveness of the programs shall be completed by the University of Nebraska at Omaha, Juvenile Justice Institute, specifically:

(i) The varying rates of recidivism, as defined by rules and regulations adopted and promulgated by the commission, and other measures for juveniles participating in community-based programs; and

(ii) Whether juveniles are sent to staff secure or secure juvenile detention after participating in a program funded by the Community-based Juvenile Services Aid Program.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds for aid appropriated under the Community-based Juvenile Services Aid Program. The report shall include, but not be limited to, an aggregate report of the use of the Community-based Juvenile Services Aid Program funds, including the types of juvenile services and programs that were funded, whether any recipients used the funds for a purpose described in subdivision (3)(c) of this section, demographic information on the total number of juveniles served, program success rates, the total number of juveniles sent to secure juvenile detention or residential treatment and secure confinement, and a listing of the expenditures of all counties and federally recognized or state-recognized Indian tribes for detention, residential treatment, and secure confinement. The report submitted to the Legislature shall be submitted electronically.

(6) The commission shall adopt and promulgate rules and regulations for the Community-based Juvenile Services Aid Program in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, the Nebraska Association of County Officials, and the University of Nebraska at Omaha, Juvenile Justice Institute. The rules and regulations shall include, but not be limited to:

(a) The required elements of a comprehensive juvenile services plan and planning process;

(b) The Community-based Juvenile Services Aid Program formula, review process, match requirements, and fund distribution. The distribution process shall ensure a conflict of interest policy;

(c) A distribution process for funds retained under subsection (3) of this section;

(d) A plan for evaluating the effectiveness of plans and programs receiving funding;

(e) A reporting process for aid recipients;

(f) A reporting process for the commission to the Governor and Legislature. The report shall be made electronically to the Governor and the Legislature; and

(g) Requirements regarding the use of the common data set.

Source: Laws 2001, LB 640, § 7; Laws 2005, LB 193, § 2; Laws 2008, LB1014, § 54; Laws 2010, LB800, § 33; Laws 2012, LB782, § 47; Laws 2013, LB561, § 48; Laws 2014, LB464, § 30; Laws 2015, LB265, § 16; Laws 2018, LB670, § 11.

43-2409 Eligible applicants; performance review; commission; powers; use of grants; limitation.

(1) The coalition shall review periodically the performance of eligible applicants participating under the Commission Grant Program and the federal act to determine if substantial compliance criteria are being met. The commission shall establish criteria for defining substantial compliance.

(2) Grants received by an eligible applicant under the Commission Grant Program shall not be used to replace or supplant any funds currently being used to support existing programs for juveniles.

(3) Grants received under the Commission Grant Program shall not be used for capital construction or the lease or acquisition of facilities except as provided in subdivision (3)(c) of section 43-2404.02.

Source: Laws 1990, LB 663, § 9; Laws 1992, LB 447, § 11; Laws 1997, LB 424, § 6; Laws 2000, LB 1167, § 47; Laws 2001, LB 640, § 11; Laws 2018, LB670, § 12.

43-2411 Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.

(1) The Nebraska Coalition for Juvenile Justice is created. Coalition members who are members of the judicial branch of government shall be nonvoting members of the coalition. The coalition members shall be appointed by the Governor and shall include the members required under subsection (2) or (3) of this section.

(2) Before June 15, 2018:

(a) As provided in the federal act, there shall be no less than fifteen nor more than thirty-three members of the coalition;

(b) The coalition shall include:

(i) The Administrator of the Office of Juvenile Services;

(ii) The chief executive officer of the Department of Health and Human Services or his or her designee;

(iii) The Commissioner of Education or his or her designee;

(iv) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;

(v) The executive director of the Nebraska Association of County Officials or his or her designee;

(vi) The probation administrator of the Office of Probation Administration or his or her designee;

(vii) One county commissioner or supervisor;

(viii) One person with data analysis experience;

(ix) One police chief;

(x) One sheriff;

(xi) The executive director of the Foster Care Review Office;

(xii) One separate juvenile court judge;

(xiii) One county court judge;

(xiv) One representative of mental health professionals who works directly with juveniles;

(xv) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;

(xvi) One volunteer who works with juvenile offenders or potential juvenile offenders;

(xvii) One person who works with an alternative to a detention program for juveniles;

(xviii) The director or his or her designee from a youth rehabilitation and treatment center;

(xix) The director or his or her designee from a secure juvenile detention facility;

(xx) The director or his or her designee from a staff secure youth confinement facility;

(xxi) At least five members who are under twenty-four years of age when appointed;

(xxii) One person who works directly with juveniles who have learning or emotional difficulties or are abused or neglected;

(xxiii) One member of the Nebraska Commission on Law Enforcement and Criminal Justice;

(xxiv) One member of a regional behavioral health authority established under section 71-808;

(xxv) One county attorney; and

(xxvi) One public defender;

(c) A majority of the coalition members, including the chairperson, shall not be full-time employees of federal, state, or local government. At least one-fifth of the coalition members shall be under the age of twenty-four years at the time of appointment; and

(d) Except as provided in subsection (4) of this section, the terms of members appointed pursuant to subdivisions (2)(b)(vii) through (2)(b)(xxvi) of this section

shall be three years, except that the terms of the initial appointments of members of the coalition shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor.

(3) On and after June 15, 2018, the coalition shall include:

(a) The chief executive officer of the Department of Health and Human Services or his or her designee;

(b) The Commissioner of Education or his or her designee;

(c) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;

(d) The executive director of the Nebraska Association of County Officials or his or her designee;

(e) The probation administrator of the Office of Probation Administration or his or her designee;

(f) One county commissioner or supervisor;

(g) One representative from law enforcement;

(h) The executive director of the Foster Care Review Office;

(i) One separate juvenile court judge;

(j) One county court judge;

(k) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;

(l) The director or his or her designee from a secure juvenile detention facility or a staff secure youth confinement facility;

(m) At least one member who is under twenty-four years of age when appointed, with juvenile justice experience preferred;

(n) One at-large member;

(o) One member of a regional behavioral health authority established under section 71-808;

(p) One county attorney; and

(q) One juvenile public defender or defense attorney.

(4)(a) Except as provided in subdivisions (c) through (e) of this subsection, members of the coalition serving prior to June 15, 2018, shall continue to serve on the coalition as representatives of the entity they were appointed to represent until their current terms of office expire and their successors are appointed and confirmed.

(b) The terms of the members appointed pursuant to subdivisions (3)(f) through (3)(q) of this section shall be three years.

(c) The positions created pursuant to subdivisions (2)(b)(i), (viii), (x), (xiv), (xvi), (xvii), (xviii), (xx), (xxii), and (xxiii) of this section shall cease to exist on June 15, 2018.

(d) The police chief appointed pursuant to subdivision (2)(b)(ix) of this section shall continue to serve until the representative from law enforcement under subdivision (3)(g) of this section is appointed.

(e) The director or his or her designee from a secure juvenile detention facility appointed pursuant to subdivision (2)(b)(xix) of this section shall contin-

ue to serve until the member under subdivision (3)(l) of this section is appointed.

(5) Any vacancy on the coalition shall be filled by appointment by the Governor. The coalition shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

(6) Members of the coalition shall be reimbursed for expenses pursuant to sections 81-1174 to 81-1177.

(7) The coalition may appoint task forces or subcommittees to carry out its work. Task force and subcommittee members shall have knowledge of, responsibility for, or interest in an area related to the duties of the coalition.

Source: Laws 1990, LB 663, § 11; Laws 1996, LB 1044, § 209; Laws 1997, LB 424, § 8; Laws 2000, LB 1167, § 48; Laws 2007, LB296, § 138; Laws 2013, LB561, § 49; Laws 2018, LB670, § 13; Laws 2020, LB381, § 32.

43-2412 Coalition; powers and duties.

(1) Consistent with the purposes and objectives of the Juvenile Services Act and the federal act, the coalition shall:

(a) Make recommendations to the commission on the awarding of grants under the Commission Grant Program to eligible applicants;

(b) Prepare at least one report annually to the Governor, the Legislature, the Office of Probation Administration, and the Office of Juvenile Services. The report submitted to the Legislature shall be submitted electronically;

(c) Ensure widespread citizen involvement in all phases of its work; and

(d) Meet at least two times each year.

(2) Consistent with the purposes and objectives of the acts and within the limits of available time and appropriations, the coalition may:

(a) Assist and advise state and local agencies in the establishment of volunteer training programs and the utilization of volunteers;

(b) Apply for and receive funds from federal and private sources for carrying out its powers and duties;

(c) Provide technical assistance to eligible applicants;

(d) Identify juvenile justice issues, share information, and monitor and evaluate programs in the juvenile justice system; and

(e) Recommend guidelines and supervision procedures to be used to develop or expand local diversion programs for juveniles from the juvenile justice system.

(3) In formulating, adopting, and promulgating the recommendations and guidelines provided for in this section, the coalition shall consider the differences among counties in population, in geography, and in the availability of local resources.

Source: Laws 1990, LB 663, § 12; Laws 1992, LB 447, § 12; Laws 1997, LB 424, § 9; Laws 2000, LB 1167, § 49; Laws 2001, LB 640, § 12; Laws 2012, LB782, § 48; Laws 2013, LB561, § 50; Laws 2018, LB670, § 14.

43-2413 Repealed. Laws 2018, LB670, § 21.

ARTICLE 26
CHILD CARE

Section
43-2606. Providers of child care and school-age-care programs; training requirements; use of Nebraska Early Childhood Professional Record System.

43-2606 Providers of child care and school-age-care programs; training requirements; use of Nebraska Early Childhood Professional Record System.

(1) The Department of Health and Human Services shall adopt and promulgate rules and regulations for mandatory training requirements for providers of child care and school-age-care programs. Such requirements shall include preservice orientation and at least four hours of annual inservice training. All child care programs required to be licensed under section 71-1911 shall show completion of a preservice orientation approved or delivered by the department prior to receiving a provisional license.

(2) Beginning January 1, 2020, for programs that report to the Nebraska Early Childhood Professional Record System created under section 71-1962, the department shall use the Nebraska Early Childhood Professional Record System to (a) document the training levels of staff in specific child care settings to assist parents in selecting optimal care settings and (b) verify minimum training requirements of employees of such programs.

(3) The training requirements shall be designed to meet the health, safety, and developmental needs of children and shall be tailored to the needs of licensed providers of child care programs. Preservice orientation and the training requirements for providers of child care programs shall include, but not be limited to, information on sudden unexpected infant death syndrome, abusive head trauma in infants and children, crying plans, and child abuse.

(4) The department shall provide or arrange for training opportunities throughout the state and shall provide information regarding training opportunities to all providers of child care programs at the time of registration or licensure, when renewing a registration, or on a yearly basis following licensure.

(5) Each provider of child care and school-age-care programs receiving orientation or training shall provide his or her social security number to the department.

(6) The department shall review and provide recommendations to the Governor for updating rules and regulations adopted and promulgated under this section at least every five years.

Source: Laws 1991, LB 836, § 6; Laws 1995, LB 401, § 6; Laws 1996, LB 1044, § 219; Laws 1997, LB 307, § 89; Laws 1997, LB 310, § 2; Laws 1997, LB 752, § 106; Laws 1999, LB 594, § 22; Laws 1999, LB 828, § 4; Laws 2006, LB 994, § 62; Laws 2007, LB296, § 149; Laws 2018, LB717, § 1; Laws 2019, LB60, § 1; Laws 2019, LB590, § 1.

ARTICLE 29
PARENTING ACT

43-2922 Terms, defined.

For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923 or the Uniform Deployed Parents Custody and Visitation Act if such act applies;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal

gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator authorized to provide mediation under section 43-2938 and acting in accordance with the Parenting Act;

(16) Office of Dispute Resolution means the office established under section 25-2904;

(17) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(18) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(19) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

(20) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(21) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(22) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(23) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(24) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(25) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source: Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55; Laws 2011, LB673, § 3; Laws 2015, LB219, § 31; Laws 2019, LB595, § 36.

Cross References

Conciliation Court Law, see section 42-802.
Uniform Deployed Parents Custody and Visitation Act, see section 43-4601.

43-2924 Applicability of act.

(1) The Parenting Act shall apply to proceedings or modifications filed on or after January 1, 2008, in which parenting functions for a child are at issue (a) under Chapter 42, including, but not limited to, proceedings or modification of orders for dissolution of marriage and child custody and (b) under sections 43-1401 to 43-1418. The Parenting Act may apply to proceedings or modifications in which parenting functions for a child are at issue under Chapter 30 or 43. The Parenting Act shall also apply to subsequent modifications of bridge orders entered under section 43-246.02 by a separate juvenile court or county court sitting as a juvenile court and docketed in a district court.

(2) The Parenting Act does not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under section 42-358,

43-512 to 43-512.18, or 43-1401 to 43-1418, the Income Withholding for Child Support Act, the Revised Uniform Reciprocal Enforcement of Support Act before January 1, 1994, or the Uniform Interstate Family Support Act for purposes of the establishment of paternity and the establishment and enforcement of child and medical support or a bridge order entered under section 43-246.02 by a separate juvenile court or county court sitting as a juvenile court and docketed in a district court. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act. If both parents are parties to a paternity or support action filed by a county attorney or authorized attorney, the parents may proceed with a parenting plan.

Source: Laws 2007, LB554, § 5; Laws 2008, LB1014, § 57; Laws 2017, LB180, § 3.

Cross References

Income Withholding for Child Support Act, see section 43-1701.
Revised Uniform Reciprocal Enforcement of Support Act, applicability, see section 42-7,105.
Uniform Interstate Family Support Act, see section 42-701.

43-2933 Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order.

(1)(a) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if the person is required to be registered as a sex offender under the Sex Offender Registration Act for an offense that would make it contrary to the best interests of the child for such access or for an offense in which the victim was a minor or if the person has been convicted under section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if anyone residing in the person's household is required to register as a sex offender under the Sex Offender Registration Act as a result of a felony conviction in which the victim was a minor or for an offense that would make it contrary to the best interests of the child for such access unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(c) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under the Sex Offender Registration Act shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the other party seeking custody, parenting time, visitation, or other access is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under the Sex Offender Registration Act.

(2) Except as otherwise provided in the Nebraska Indian Child Welfare Act, no person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 or 28-320 or

a law in another jurisdiction similar to either section 28-319 or 28-320 and the child was conceived as a result of that violation unless the custodial parent or guardian, as defined in section 43-245, consents.

(3) A change in circumstances relating to subsection (1) or (2) of this section is sufficient grounds for modification of a previous order.

Source: Laws 2007, LB554, § 14; Laws 2017, LB289, § 23.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.
Sex Offender Registration Act, see section 29-4001.

43-2937 Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.

(1) In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators who are qualified under subsection (2) or (3) of section 43-2938.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) Except as provided in subsection (4) of this section, for cases filed on or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in mediation or specialized alternative dispute resolution with a mediator, a court conciliation program, or an approved mediation center as provided in section 43-2938.

(4) For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not

possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

Source: Laws 2007, LB554, § 18; Laws 2008, LB1014, § 65; Laws 2010, LB901, § 3; Laws 2019, LB595, § 37.

43-2938 Mediator; qualifications; training; approved specialized mediator; requirements.

(1) A mediator under the Parenting Act may be a court conciliation program counselor, a court conciliation program mediator, an approved mediation center affiliated mediator, a mediator approved by the Office of Dispute Resolution, or an attorney as provided in subsection (4) of this section.

(2) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved Parenting Act mediator, a person shall have basic mediation training and family mediation training, approved by the Office of Dispute Resolution, and shall have served as an apprentice to a mediator as defined in section 25-2903. The training shall include, but not be limited to:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the child support guidelines pursuant to section 42-364.16;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance;

(d) General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families;

(e) Knowledge of child abuse or neglect and domestic intimate partner abuse and their potential impact upon the safety of family members, including knowledge of provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures; and

(f) Knowledge in regard to the potential effects of domestic violence on a child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; interviewing, documentation of, and appropriate recommendations for families affected by domestic intimate partner abuse; and availability of community and legal domestic violence resources.

(3) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved specialized mediator for parents involved in high conflict and situations in which abuse is present, the mediator shall apply to an approved mediation center or court conciliation program for consideration to be listed as an approved specialized mediator. The approved mediation center or court conciliation program shall submit its list of approved specialized mediators for inclusion in the roster to the Office of Dispute

Resolution on an annual basis. Minimum requirements to be listed as an approved specialized mediator include:

(a) Affiliation with a court conciliation program or an approved mediation center;

(b) Meeting the minimum standards for a Parenting Act mediator under this section;

(c) Meeting additional relevant standards and qualifications as determined by the State Court Administrator; and

(d) Satisfactorily completing an additional minimum twenty-four-hour specialized alternative dispute resolution domestic mediation training course developed by entities providing domestic abuse services and mediation services for children and families and approved by the State Court Administrator. This course shall include advanced education in regard to the potential effects of domestic violence on the child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; and appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan, as necessary and relevant.

(4) In lieu of qualifying as a mediator under subsection (2) or (3) of this section, an attorney licensed to practice law in the State of Nebraska may serve as a parenting plan mediator if the parties agree to use such attorney as a mediator.

Source: Laws 2007, LB554, § 19; Laws 2019, LB595, § 38.

43-2939 Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.

(1) A Parenting Act mediator, including an attorney serving as a parenting plan mediator pursuant to subsection (4) of section 43-2938, prior to meeting with the parties in an initial mediation session, shall provide an individual initial screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exist, the mediator shall not proceed with the mediation session but shall proceed with a specialized alternative dispute resolution process that addresses safety measures for the parties, if the mediator is on the approved specialized list of an approved mediation center or court conciliation program, or shall refer the parties to a mediator who is so qualified. When public records such as current or expired protection orders, criminal domestic violence cases, and child abuse or neglect proceedings are provided to a mediator, such records shall be considered during the individual initial screening session to determine appropriate dispute resolution methods. The mediator has the duty to determine whether to proceed in joint session, individual sessions, or caucus meetings with the parties in order to address safety and freedom to negotiate. In any mediation or specialized alternative dispute resolution, a mediator has the ongoing duty to assess appropriateness of the process and safety of the process upon the parties.

(2) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client as an attorney or a counselor shall

mediate the case, unless such services have been provided to both participants and mediation shall not proceed in such cases unless the prior relationship has been disclosed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

(3) No mediator who is also a licensed attorney may, after completion of the mediation process, represent either party in the role of attorney in the same matter through subsequent legal proceedings.

(4) The mediator shall facilitate the mediation process. Prior to the commencement of mediation, the mediator shall notify the parties that, if the mediator has reasonable cause to believe that a child has been subjected to child abuse or neglect or if the mediator observes a child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, the mediator is obligated under section 28-711 to report such information to the authorized child abuse and neglect reporting agency and shall report such information unless the information has been previously reported. The mediator shall have access to court files for purposes of mediation under the Parenting Act. The mediator shall be impartial and shall use his or her best efforts to effect an agreement or parenting plan as required under the act. The mediator may interview the child if, in the mediator's opinion, such an interview is necessary or appropriate. The parties shall not bring the child to any sessions with the mediator unless specific arrangements have been made with the mediator in advance of the session. The mediator shall assist the parties in assessing their needs and the best interests of the child involved in the proceeding and may include other persons in the mediation process as necessary or appropriate. The mediator shall advise the parties that they should consult with an attorney.

(5) The mediator may terminate mediation if one or more of the following conditions exist:

(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;

(b) Allegations are made of direct physical or significant emotional harm to a party or to a child that have not been heard and ruled upon by the court; or

(c) Mediation will otherwise fail to serve the best interests of the child.

(6) Until July 1, 2010, either party may terminate mediation at any point in the process. On and after July 1, 2010, a party may not terminate mediation until after an individual initial screening session and one mediation or specialized alternative dispute resolution session are held. The session after the individual initial screening session shall be an individual specialized alternative dispute resolution session if the screening indicated the existence of any condition specified in subsection (1) of this section.

Source: Laws 2007, LB554, § 20; Laws 2020, LB912, § 17.

ARTICLE 31

COURT PROCEEDINGS

Section

43-3102 Waiver of right to counsel by juvenile; writing; when waiver not allowed; Supreme Court; duties.

(1) In any court proceeding, any waiver of the right to counsel by a juvenile shall be made in open court, shall be recorded, and shall be confirmed in a writing signed by the juvenile.

(2) A court shall not accept a juvenile's waiver of the right to counsel unless the waiver satisfies subsection (1) of this section and is an affirmative waiver that is made intelligently, voluntarily, and understandingly. In determining whether such waiver was made intelligently, voluntarily, and understandingly, the court shall consider, among other things: (a) The age, intelligence, and education of the juvenile, (b) the juvenile's emotional stability, and (c) the complexity of the proceedings.

(3) On or before July 1, 2022, the Supreme Court shall provide, by court rule, a process to ensure that a juvenile has consulted with counsel, and if not, is provided the opportunity to consult with counsel prior to the juvenile exercising their right to waive their right to counsel.

(4) The court shall ensure that a juvenile represented by an attorney consults with his or her attorney before any waiver of counsel.

(5) No parent, guardian, custodian, or other person may waive the juvenile's right to counsel.

(6) A juvenile's right to be represented by counsel may not be waived in the following circumstances:

(a) If the juvenile is under the age of fourteen;

(b) For a detention hearing;

(c) For any dispositional hearing where out-of-home placement is sought; or

(d) If there is a motion to transfer the juvenile from juvenile court to county court or district court.

Source: Laws 2016, LB894, § 16; Laws 2021, LB307, § 3.

ARTICLE 32

MCGRUFF HOUSE

Section
43-3201. Repealed. Laws 2019, LB2, § 1.

43-3201 Repealed. Laws 2019, LB2, § 1.

ARTICLE 33

SUPPORT ENFORCEMENT

(e) STATE DISBURSEMENT UNIT

Section
43-3342.03. State Disbursement Unit; support order collection; fees authorized; State Disbursement Unit Cash Fund; created; use; investment; electronic remittance by employers.
43-3342.05. Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(e) STATE DISBURSEMENT UNIT

43-3342.03 State Disbursement Unit; support order collection; fees authorized; State Disbursement Unit Cash Fund; created; use; investment; electronic remittance by employers.

(1) All support orders shall direct payment of support as provided in section 42-369. Any support order issued prior to the date that the State Disbursement Unit becomes operative for which the payment is to be made to the clerk of the district court shall be deemed to require payment to the State Disbursement Unit after a notice to the obligor is issued. Support order payments made to the clerk of the district court shall be forwarded to the State Disbursement Unit by electronic transfer.

(2) The State Disbursement Unit may collect a fee equal to the actual cost of processing any payments for returned check charges or charges for electronic payments not accepted, except that the fee shall not exceed thirty dollars. After a payor has originated one payment resulting in a returned check or an electronic payment not accepted within a period of two years, the unit may issue a notice to the originator that, for the following year, any payment shall be required to be paid by money order, cashier's check, certified check, or any other form of guaranteed payment as may be approved by the unit. After a payor has originated two payments resulting in returned checks or electronic payments not accepted, the unit may issue a notice to the originator that all future payments shall be paid by money order, cashier's check, certified check, or any other form of guaranteed payment as may be approved by the unit, except that pursuant to rule and regulation and at least two years after such issuance of notice, the unit may waive for good cause shown such requirements for methods of payment. The fees shall be remitted to the State Treasurer for credit to the State Disbursement Unit Cash Fund, which is hereby created, which funds shall be used to offset the expenses incurred in the collection of child support bad debt and other collection expenses incurred by the unit. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) The State Disbursement Unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical for the collection and disbursement of support payments.

(4) Employers with more than fifty employees who have an employee with a child support order shall remit child support payments electronically.

Source: Laws 2000, LB 972, § 3; Laws 2002, LB 1062, § 4; Laws 2005, LB 116, § 21; Laws 2008, LB620, § 1; Laws 2019, LB505, § 1.

Cross References

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

43-3342.05 Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(1) The Child Support Advisory Commission is created. Commission members shall include:

(a) Two district court judges whose jurisdiction includes domestic relations, to be appointed by the Supreme Court;

(b) One member of the Nebraska State Bar Association who practices primarily in the area of domestic relations;

(c) One county attorney who works in child support;

(d) One professional who works in the field of economics or mathematics or another field of expertise relevant to child support;

(e) One custodial parent who has a court order to receive child support;

(f) One noncustodial parent who is under a support order to pay child support;

(g) The chairperson of the Judiciary Committee of the Legislature, who shall serve as the chairperson of the commission;

(h) The chairperson of the Health and Human Services Committee of the Legislature;

(i) The State Treasurer or his or her designee;

(j) The State Court Administrator or his or her designee; and

(k) The director of the Title IV-D Division or his or her designee.

(2)(a) The Supreme Court shall notify the Executive Board of the Legislative Council of its intent to review the child support guidelines pursuant to section 42-364.16. Following such notification, the chairperson of the commission shall call a meeting of the commission.

(b) Each time the commission meets pursuant to subdivision (2)(a) of this section, the Supreme Court shall make appointments to fill the membership under subdivision (1)(a) of this section and the chairperson of the Executive Board shall make appointments to fill each membership under subdivisions (1)(b) through (f) of this section. The terms of these members shall expire after the commission has fulfilled its duties pursuant to subsection (3) of this section.

(c) Members shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

(d) If determined to be necessary to perform the duties of the commission, the commission may hire, contract, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff with prior approval of the chairperson of the Executive Board.

(e) For administrative purposes, the commission shall be managed and administered by the Legislative Council.

(3) The duties of the commission shall include, but are not limited to:

(a) Reviewing the child support guidelines adopted by the Supreme Court and recommending, if appropriate, any changes to the guidelines. Whenever practicable, the commission shall base its recommendations on economic data and statistics collected in the State of Nebraska. In reviewing the guidelines and formulating recommendations, the commission may conduct public hearings around the state; and

(b) Presenting reports, as deemed necessary, of its activities and recommendations to the Supreme Court and the Executive Board. Any reports submitted to the Executive Board shall be submitted electronically.

(4) The Supreme Court shall review the commission's reports. The Supreme Court may amend the child support guidelines established pursuant to section 42-364.16 based upon the commission's recommendations.

Source: Laws 2000, LB 972, § 5; Laws 2002, LB 1062, § 5; Laws 2006, LB 1113, § 43; Laws 2013, LB222, § 11; Laws 2020, LB381, § 33.

ARTICLE 34

EARLY CHILDHOOD INTERAGENCY COORDINATING COUNCIL

Section
43-3401. Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.

43-3401 Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.

The Early Childhood Interagency Coordinating Council is created. The council shall advise and assist the collaborating agencies in carrying out the provisions of the Early Intervention Act, the Quality Child Care Act, sections 79-1101 to 79-1104, and other early childhood care and education initiatives under state supervision. Membership and activities of the council shall comply with all applicable provisions of federal law. Members of the council shall be appointed by the Governor and shall include, but not be limited to:

(1) Parents of children who require early intervention services, early childhood special education, and other early childhood care and education services; and

(2) Representatives of school districts, social services, health and medical services, family child care and center-based early childhood care and education programs, agencies providing training to staff of child care programs, resource and referral agencies, mental health services, developmental disabilities services, educational service units, Head Start, higher education, physicians, the Legislature, business persons, and the collaborating agencies.

Terms of the members shall be for three years, and a member shall not serve more than two consecutive three-year terms. Members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177, including child care expenses, with funds provided for such purposes through the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104.

Members of the Nebraska Interagency Coordinating Council serving on July 13, 2000, shall constitute the Early Childhood Interagency Coordinating Council and shall serve for the remainder of their terms. The Governor shall make additional appointments as required by this section and to fill vacancies as needed. The Governor shall set the initial terms of additional appointees to result in staggered terms for members of the council. The Department of Health and Human Services and the State Department of Education shall provide and coordinate staff assistance to the council.

Source: Laws 2000, LB 1135, § 6; Laws 2006, LB 994, § 63; Laws 2007, LB296, § 170; Laws 2020, LB381, § 34.

Cross References

Early Intervention Act, see section 43-2501.
Quality Child Care Act, see section 43-2601.

ARTICLE 40
CHILDREN'S BEHAVIORAL HEALTH

Section
43-4001. Children's Behavioral Health Task Force; created; members; expenses; chairperson.
43-4002. Repealed. Laws 2020, LB1188, § 21.

43-4001 Children's Behavioral Health Task Force; created; members; expenses; chairperson.

(1) The Children's Behavioral Health Task Force is created. The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or another member of the committee as his or her designee;

(b) The chairperson of the Appropriations Committee of the Legislature or another member of the committee as his or her designee;

(c) Two providers of community-based behavioral health services to children, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(d) One regional administrator appointed under section 71-808, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(e) Two representatives of organizations advocating on behalf of consumers of children's behavioral health services and their families, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(f) One juvenile court judge, appointed by the Chief Justice of the Supreme Court; and

(g) The probation administrator or his or her designee.

(2) Members of the task force shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for expenses as provided in sections 81-1174 to 81-1177.

(3) The chairperson of the Health and Human Services Committee of the Legislature or his or her designee shall serve as chairperson of the task force. Administrative and staff support for the task force shall be provided by the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature.

Source: Laws 2007, LB542, § 1; Laws 2008, LB928, § 14; Laws 2009, LB540, § 1; Laws 2020, LB381, § 35.

43-4002 Repealed. Laws 2020, LB1188, § 21.

ARTICLE 42
NEBRASKA CHILDREN'S COMMISSION

Section
43-4201. Legislative findings, declarations, and intent.
43-4202. Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant.
43-4203. Nebraska Children's Commission; duties; committees created; jurisdiction over committees; establish networks; organize subcommittees; conflict of interest.

43-4201 Legislative findings, declarations, and intent.

(1) The Legislature finds and declares that:

(a) The Health and Human Services Committee of the Legislature documented serious problems with the child welfare system in its 2011 report of the study that was conducted under Legislative Resolution 37, One Hundred Second Legislature, First Session, 2011;

(b) Improving the safety and well-being of Nebraska's children and families is a critical priority which must guide policy decisions in a variety of areas;

(c) To improve the safety and well-being of children and families in Nebraska, the legislative, judicial, and executive branches of government must work together to ensure:

(i) The integration, coordination, and accessibility of all services provided to children and families by the state, whether directly or pursuant to contract;

(ii) Reasonable access to appropriate services statewide and efficiency in service delivery; and

(iii) The availability of accurate and complete data as well as ongoing data analysis to identify important trends and problems as they arise; and

(d) As the primary state agency serving children and families, the Department of Health and Human Services must exemplify leadership, responsiveness, transparency, and efficiency and program managers within the agency must strive cooperatively to ensure that their programs view the needs of children and families comprehensively as a system rather than individually in isolation, including pooling funding when possible and appropriate.

(2) It is the intent of the Legislature in creating the Nebraska Children's Commission to provide for the needs identified in subsection (1) of this section, to provide strategic priorities for research or policy development within the child welfare system and juvenile justice system, and to provide a structure to the commission that maintains the framework of the three branches of government and their respective powers and duties.

Source: Laws 2012, LB821, § 1; Laws 2019, LB600, § 3.

43-4202 Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant.

(1) The Nebraska Children's Commission is created as a high-level leadership body to monitor and evaluate the child welfare and juvenile justice systems. The commission shall provide a permanent forum for collaboration among state, local, community, public, and private stakeholders in child welfare and juvenile justice programs and services.

(2)(a) The Governor shall appoint fifteen voting members. The members appointed pursuant to this subdivision shall represent stakeholders in the child welfare and juvenile justice systems and shall include: (i) A biological parent currently or previously involved in the child welfare system or juvenile justice system; (ii) a young adult previously in foster care; and (iii) a representative of a federally recognized Indian tribe residing within the State of Nebraska and appointed from a list of three nominees submitted by the Commission on Indian Affairs.

(b) The Nebraska Children's Commission shall have the following nonvoting, ex officio members: (i) The chairperson of the Health and Human Services Committee of the Legislature or a committee member designated by the chairperson; (ii) the chairperson of the Judiciary Committee of the Legislature or a committee member designated by the chairperson; (iii) the chairperson of the Appropriations Committee of the Legislature or a committee member designated by the chairperson; (iv) three persons appointed by the State Court Administrator; (v) the executive director of the Foster Care Review Office; (vi) the Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services or his or her designee; (vii) the Director of Behavioral Health of the Division of Behavioral Health of the Department of Health and Human Services or his or her designee; (viii) the Commissioner of Education or his or her designee; and (ix) the Inspector General of Nebraska Child Welfare.

(3) The nonvoting members may attend commission meetings and participate in the discussions of the commission, provide information to the commission on the policies, programs, and processes within their areas of expertise, and gather information for the commission. The commission may hire staff to carry out the responsibilities of the commission.

(4) For administrative purposes, the offices of the staff of the commission shall be located in the Foster Care Review Office. The commission may hire a consultant with experience in facilitating strategic planning to provide neutral, independent assistance in updating the statewide strategic plan.

(5) The commission, with assistance from the executive director of the Foster Care Review Office, shall employ a policy analyst to provide research and expertise to the commission relating to the child welfare system. The policy analyst shall work in conjunction with the staff of the commission. His or her responsibilities may include, but are not limited to: (a) Monitoring the Nebraska child welfare system and juvenile justice system to provide information to the commission; (b) analyzing child welfare and juvenile justice public policy through research and literature reviews and drafting policy reports when requested; (c) managing or leading projects or tasks and providing resource support to commission members and committees as determined by the chairperson of the commission; (d) serving as liaison among child welfare and

juvenile justice stakeholders and the public and responding to information inquiries as required; and (e) other duties as assigned by the commission.

(6) Members of the commission shall be reimbursed for expenses as members of such commission as provided in sections 81-1174 to 81-1177. No member of the commission shall have any private financial interest, profit, or benefit from any work of the commission.

(7) It is the intent of the Legislature to fund the operations of the commission using the Nebraska Health Care Cash Fund for fiscal years 2019-20 and 2020-21.

Source: Laws 2012, LB821, § 2; Laws 2013, LB269, § 5; Laws 2013, LB530, § 5; Laws 2015, LB87, § 1; Laws 2016, LB746, § 24; Laws 2019, LB600, § 4; Laws 2020, LB381, § 36.

43-4203 Nebraska Children's Commission; duties; committees created; jurisdiction over committees; establish networks; organize subcommittees; conflict of interest.

(1) The Nebraska Children's Commission shall create a committee to examine the Office of Juvenile Services and the Juvenile Services Division of the Office of Probation Administration. Such committee shall review the role and effectiveness of out-of-home placements utilized in the juvenile justice system, including the youth rehabilitation and treatment centers, and make recommendations to the commission on the juvenile justice continuum of care, including what populations should be served in out-of-home placements and what treatment services should be provided at the centers in order to appropriately serve those populations. Such committee shall also review how mental and behavioral health services are provided to juveniles in residential placements and the need for such services throughout Nebraska and make recommendations to the commission relating to those systems of care in the juvenile justice system. The committee shall collaborate with the Juvenile Justice Institute at the University of Nebraska at Omaha, the Center for Health Policy at the University of Nebraska Medical Center, the behavioral health regions as established in section 71-807, and state and national juvenile justice experts to develop recommendations. The recommendations shall include a plan to implement a continuum of care in the juvenile justice system to meet the needs of Nebraska families, including specific recommendations for the rehabilitation and treatment model. The recommendations shall be delivered to the commission and electronically to the Judiciary Committee of the Legislature annually by September 1.

(2) The commission shall collaborate with juvenile justice specialists of the Office of Probation Administration and county officials with respect to any county-operated practice model participating in the Crossover Youth Program of the Center for Juvenile Justice Reform at Georgetown University.

(3) The commission shall analyze case management workforce issues and make recommendations to the Health and Human Services Committee of the Legislature regarding:

(a) Salary comparisons with other states and the current pay structure based on job descriptions;

(b) Utilization of incentives for persons who work in the area of child welfare;

(c) Evidence-based training requirements for persons who work in the area of child welfare and their supervisors; and

(d) Collaboration with the University of Nebraska to increase and sustain such workforce.

(4) The Foster Care Reimbursement Rate Committee created pursuant to section 43-4216, the Nebraska Strengthening Families Act Committee created pursuant to section 43-4716, and the Bridge to Independence Advisory Committee created pursuant to section 43-4513 shall be under the jurisdiction of the commission.

(5) The commission shall work with the office of the State Court Administrator, as appropriate, and entities which coordinate facilitated conferencing as described in section 43-247.03.

(6) The commission shall work with administrators from each of the service areas designated pursuant to section 81-3116, the teams created pursuant to section 28-728, local foster care review boards, child advocacy centers, the teams created pursuant to the Supreme Court's Through the Eyes of the Child Initiative, community stakeholders, and advocates for child welfare programs and services to establish networks in each of such service areas. Such networks shall permit collaboration to strengthen the continuum of services available to child welfare agencies and to provide resources for children and juveniles outside the child protection system.

(7) The commission may organize subcommittees as it deems necessary. Members of the subcommittees may be members of the commission or may be individuals who have knowledge of the subcommittee's subject matter, professional expertise to assist the subcommittee in completing its assigned responsibilities, or the ability to collaborate within the subcommittee and with the commission to carry out the powers and duties of the commission. A subcommittee shall meet as necessary to complete the work delegated by the commission and shall report its findings to the relevant committee within the commission.

(8) No member of any committee or subcommittee created pursuant to this section shall have any private financial interest, profit, or benefit from any work of such committee or subcommittee.

Source: Laws 2012, LB821, § 3; Laws 2013, LB269, § 6; Laws 2013, LB530, § 6; Laws 2013, LB561, § 56; Laws 2014, LB464, § 33; Laws 2016, LB746, § 25; Laws 2018, LB732, § 1; Laws 2019, LB600, § 5; Laws 2020, LB1061, § 8.

43-4204 Strategic child welfare priorities for research or policy development.

The Nebraska Children's Commission shall determine three to five strategic child welfare priorities for research or policy development for each biennium to carry out the legislative intent stated in section 43-4201 for child welfare program and service reform in Nebraska. In determining the strategic child welfare priorities, the commission shall consider the findings and recommendations set forth in the annual report of the Foster Care Review Board, the annual report of the Office of Inspector General for Child Welfare, and the federal Child and Family Services Reviews outcomes.

Source: Laws 2012, LB821, § 4; Laws 2019, LB600, § 6.

43-4205 Repealed. Laws 2019, LB600, § 23.

43-4206 Department of Health and Human Services; Office of Probation Administration; cooperate with Nebraska Children's Commission.

The Department of Health and Human Services and the Office of Probation Administration shall fully cooperate with the Nebraska Children's Commission. The department shall provide to the commission all requested information on children and juveniles in Nebraska, including, but not limited to, departmental reports, data, programs, processes, finances, and policies.

Source: Laws 2012, LB821, § 6; Laws 2019, LB600, § 7.

43-4207 Nebraska Children's Commission; report; hearing.

The Nebraska Children's Commission shall annually provide a written report to the Governor and an electronic report to the Health and Human Services Committee of the Legislature defining its strategic child welfare priorities and progress toward addressing such priorities, summarizing reports from each committee and subcommittee of the commission, and making recommendations on or before September 1 of each year. The commission shall present a summary of such report in an annual public hearing before the Health and Human Services Committee of the Legislature on or before December 1 of each year.

Source: Laws 2012, LB821, § 7; Laws 2015, LB87, § 2; Laws 2018, LB732, § 2; Laws 2019, LB600, § 8.

43-4208 Repealed. Laws 2019, LB600, § 23.

43-4209 Repealed. Laws 2019, LB600, § 23.

43-4210 Repealed. Laws 2019, LB600, § 23.

43-4211 Repealed. Laws 2019, LB600, § 23.

43-4213 Repealed. Laws 2019, LB600, § 23.

43-4214 Repealed. Laws 2019, LB600, § 23.

43-4215 Reimbursement rate recommendations; legislative findings and intent; Division of Children and Family Services of Department of Health and Human Services; implementation; pilot project; reports; contents.

(1) On or before July 1, 2014, the Division of Children and Family Services of the Department of Health and Human Services shall implement the reimbursement rate recommendations of the Foster Care Reimbursement Rate Committee as reported to the Legislature pursuant to section 43-4212 as such section existed before June 5, 2013.

(2) It is the intent of the Legislature to create additional levels of caregiving for youth in foster care and to create an implementation plan for treatment family care services in order to expand the service array for high-acuity youth in the foster care system.

(3) The Legislature finds that (a) there is a need for consistency in the implementation of additional tiers of caregiving across the state, (b) additional tiers of caregiving and reimbursement exist in the continuum of foster care services available in Nebraska, however, there is a variation in the rates,

implementation and outcomes, (c) the use of rates outside of the established rate structure can create barriers to permanency for children entering adoption and guardianship and prohibits the state from accessing federal foster care funds that would otherwise be available under Title IV-E of the federal Social Security Act, and (d) additional tiers of caregiving should be utilized to support the exceptional caregiving needs of children.

(4) The Legislature further finds that (a) additional treatment services are needed to support the behavioral and mental health needs of youth who are at risk of entering, or who are stepping down from, congregate treatment placement, and (b) treatment family care services uses blended funding to support caregivers and prevent placement disruption.

(5) On or before October 1, 2022, the Division of Children and Family Services of the Department of Health and Human Services shall, in collaboration with the Foster Care Reimbursement Rate Committee, implement additional statewide tiers of foster care reimbursements for specialized caregiving with standardized rates for foster parents and child placing agencies.

(6)(a) On or before July 1, 2013, the Division of Children and Family Services of the Department of Health and Human Services shall develop a pilot project as provided in this subsection to implement the standardized level of care assessment tools recommended by the Foster Care Reimbursement Rate Committee as reported to the Legislature pursuant to section 43-4212 as such section existed before June 5, 2013.

(b)(i) The pilot project shall comprise two groups: One in an urban area and one in a rural area. The size of each group shall be determined by the division to ensure an accurate estimate of the effectiveness and cost of implementing such tools statewide.

(ii) The Nebraska Children's Commission shall review and provide a progress report on the pilot project by October 1, 2013, to the department and electronically to the Health and Human Services Committee of the Legislature; shall provide to the department and electronically to the committee by December 1, 2013, a report including recommendations and any legislation necessary, including appropriations, to adopt the recommendations, regarding the adaptation or continuation of the implementation of a statewide standardized level of care assessment; and shall provide to the department and electronically to the committee by February 1, 2014, a final report and final recommendations of the commission.

Source: Laws 2013, LB530, § 2; Laws 2022, LB1173, § 10.
Operative date April 20, 2022.

43-4216 Foster Care Reimbursement Rate Committee; created; members; terms; vacancies.

(1) The Foster Care Reimbursement Rate Committee is created. The committee shall be convened at least once every four years.

(2) The Foster Care Reimbursement Rate Committee shall consist of no fewer than nine members, including:

(a) The following voting members: (i) Representatives from a child welfare agency that contracts directly with foster parents, from each of the service areas designated pursuant to section 81-3116; (ii) a representative from an advocacy organization which deals with legal and policy issues that include

child welfare; (iii) a representative from an advocacy organization, the singular focus of which is issues impacting children; (iv) a representative from a foster and adoptive parent association; (v) a representative from a lead agency; (vi) a representative from a child advocacy organization that supports young adults who were in foster care as children; (vii) a foster parent who contracts directly with the Department of Health and Human Services; and (viii) a foster parent who contracts with a child welfare agency; and

(b) The following nonvoting, ex officio members: (i) The chief executive officer of the Department of Health and Human Services or his or her designee and (ii) representatives from the Division of Children and Family Services of the department from each service area designated pursuant to section 81-3116, including at least one division employee with a thorough understanding of the current foster care payment system and at least one division employee with a thorough understanding of the N-FOCUS electronic data collection system. The nonvoting, ex officio members of the committee may attend committee meetings and participate in discussions of the committee and shall gather and provide information to the committee on the policies, programs, and processes of each of their respective bodies. The nonvoting, ex officio members shall not vote on decisions or recommendations by the committee.

(3) Members of the committee shall serve for terms of four years and until their successors are appointed and qualified. The Nebraska Children's Commission shall appoint the members of the committee and the chairperson of the committee and may fill vacancies on the committee as they occur.

Source: Laws 2013, LB530, § 3; Laws 2019, LB600, § 9.

43-4217 Foster Care Reimbursement Rate Committee; duties; reports.

(1) The Foster Care Reimbursement Rate Committee created in section 43-4216 shall review and make recommendations in the following areas: Foster care reimbursement rates, the statewide standardized level of care assessment, and adoption assistance payments as required by section 43-117. In making recommendations to the Legislature, the committee shall use the then-current foster care reimbursement rates as the beginning standard for setting reimbursement rates. The committee shall adjust the standard to reflect the reasonable cost of achieving measurable outcomes for all children in foster care in Nebraska. The committee shall (a) analyze then-current consumer expenditure data reflecting the costs of caring for a child in Nebraska, (b) identify and account for additional costs specific to children in foster care, and (c) apply a geographic cost-of-living adjustment for Nebraska. The reimbursement rate structure shall comply with funding requirements related to Title IV-E of the federal Social Security Act, as amended, and other federal programs as appropriate to maximize the utilization of federal funds to support foster care.

(2) The committee shall review the role and effectiveness of and make recommendations on the statewide standardized level of care assessment containing standardized criteria to determine a foster child's placement needs and to identify the appropriate foster care reimbursement rate. The committee shall review other states' assessment models and foster care reimbursement rate structures in completing the statewide standardized level of care assessment review and the standard statewide foster care reimbursement rate structure. The committee shall ensure the statewide standardized level of care assessment and the standard statewide foster care reimbursement rate structure provide

incentives to tie performance in achieving the goals of safety, maintaining family connection, permanency, stability, and well-being to reimbursements received. The committee shall review and make recommendations on assistance payments to adoptive parents as required by section 43-117. The committee shall make recommendations to ensure that changes in foster care reimbursement rates do not become a disincentive to permanency.

(3) The Foster Care Reimbursement Rate Committee shall provide electronic reports with its recommendation to the Health and Human Services Committee of the Legislature on July 1, 2016, and every four years thereafter.

Source: Laws 2013, LB530, § 4; Laws 2019, LB600, § 10.

43-4218 Transferred to section 43-4716.

43-4219 Foster care reimbursement rates; increases; legislative intent.

It is the intent of the Legislature that beginning July 1, 2021, the Division of Children and Family Services of the Department of Health and Human Services shall implement a two-percent increase to foster care reimbursement rates for fiscal year 2021-22 and beginning July 1, 2022, the division shall implement a two-percent increase to foster care reimbursement rates for fiscal year 2022-23.

Source: Laws 2021, LB100, § 3.

ARTICLE 43

OFFICE OF INSPECTOR GENERAL OF NEBRASKA CHILD WELFARE ACT

Section

43-4301 Act, how cited.

Sections 43-4301 to 43-4332 shall be known and may be cited as the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 8; Laws 2015, LB347, § 4; Laws 2017, LB207, § 1.

43-4318 Office; duties; reports of death, serious injury, or allegations of sexual abuse; when required; reports of occurrences at youth rehabilitation and treatment center; state agencies, law enforcement agencies, and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of:

(i) The department by an employee of or person under contract with the department, a private agency, a licensed child care facility, a foster parent, or any other provider of child welfare services or which may provide a basis for discipline pursuant to the Uniform Credentialing Act;

(ii) Subject to subsection (5) of this section, the juvenile services division by an employee of or person under contract with the juvenile services division, a private agency, a licensed facility, a foster parent, or any other provider of juvenile justice services;

(iii) The commission by an employee of or person under contract with the commission related to programs and services supported by the Nebraska County Juvenile Services Plan Act, the Community-based Juvenile Services Aid Program, juvenile pretrial diversion programs, or inspections of juvenile facilities; and

(iv) A juvenile detention facility and staff secure juvenile facility by an employee of or person under contract with such facilities;

(b) Death or serious injury in foster homes, private agencies, child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other programs and facilities licensed by or under contract with the department or the juvenile services division when the office, upon review, determines the death or serious injury did not occur by chance; and

(c) Death or serious injury in any case in which services are provided by the department or the juvenile services division to a child or his or her parents or any case involving an investigation under the Child Protection and Family Safety Act, which case has been open for one year or less and upon review determines the death or serious injury did not occur by chance.

(2) The department, the juvenile services division, each juvenile detention facility, and each staff secure juvenile facility shall report to the office (a) all cases of death or serious injury of a child in a foster home, private agency, child care facility or program, or other program or facility licensed by the department or inspected through the commission to the Inspector General as soon as reasonably possible after the department or the Office of Probation Administration learns of such death or serious injury and (b) all allegations of sexual abuse of a state ward, juvenile on probation, juvenile in a detention facility, and juvenile in a residential child-caring agency. For purposes of this subsection, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

(3)(a) The Office of Juvenile Services shall report to the office of Inspector General of Nebraska Child Welfare as soon as reasonably possible after any of the following instances occur at a youth rehabilitation and treatment center:

(i) An assault;

(ii) An escape or elopement;

(iii) An attempted suicide;

(iv) Self-harm by a juvenile;

(v) Property damage not caused by normal wear and tear;

(vi) The use of mechanical restraints on a juvenile;

(vii) A significant medical event suffered by a juvenile; and

(viii) Internally substantiated violations of 34 U.S.C. 30301 et seq.

(b) The Office of Juvenile Services and the office of Inspector General of Nebraska Child Welfare shall, if requested by either party, work in collaboration to clarify the specific parameters to comply with subdivision (3)(a) of this section.

(4) The department shall notify the office of Inspector General of Nebraska Child Welfare of any leadership changes within the Office of Juvenile Services and the youth rehabilitation and treatment centers.

(5) With respect to any investigation conducted by the Inspector General pursuant to subdivision (1)(a) of this section that involves possible misconduct by an employee of the juvenile services division, the Inspector General shall immediately notify the probation administrator and provide the information pertaining to potential personnel matters to the Office of Probation Administration.

(6) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection and Family Safety Act. The Inspector General and his or her staff are subject to the reporting requirements of the Child Protection and Family Safety Act.

(7) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2012, LB821, § 25; Laws 2013, LB561, § 58; Laws 2014, LB853, § 28; Laws 2015, LB347, § 13; Laws 2016, LB954, § 3; Laws 2017, LB207, § 2; Laws 2018, LB1078, § 4; Laws 2020, LB1144, § 1.

Cross References

Child Protection and Family Safety Act, see section 28-710.
Nebraska County Juvenile Services Plan Act, see section 43-3501.
Uniform Credentialing Act, see section 38-101.

43-4323 Inspector General; powers; rights of person required to provide information.

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned. Any fees associated with counsel present under this section shall not be the responsibility of the office of Inspector General of Nebraska Child Welfare.

Source: Laws 2012, LB821, § 30; Laws 2017, LB207, § 3.

43-4325 Reports of investigations; distribution; redact confidential information; powers of office; summarized final report; release.

(1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) Except when a report is provided to a guardian ad litem or an attorney in the juvenile court pursuant to subsection (2) of section 43-4327, the office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the Health and Human Services Committee of the Legislature or the chairperson of the Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska child welfare system.

(3)(a) A summarized final report based on an investigation may be publicly released in order to bring awareness to systemic issues.

(b) Such report shall be released only:

(i) After a disclosure is made to the appropriate chairperson or chairpersons pursuant to subsection (2) of this section; and

(ii) If a determination is made by the Inspector General with the appropriate chairperson that doing so would be in the best interest of the public.

(c) If there is disagreement about whether releasing the report would be in the best interest of the public, the chairperson of the Executive Board of the Legislative Council may be asked to make the final decision.

(4) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(5) The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in

good faith pursuant to the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 32; Laws 2015, LB347, § 18; Laws 2017, LB207, § 4.

43-4327 Inspector General's report of investigation; contents; distribution.

(1) The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented to the director, the probation administrator, or the executive director within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report beyond the entity that is the subject of the report. The Inspector General, upon notifying the Public Counsel and the director, the probation administrator, or the executive director, may distribute the report, to the extent that it is relevant to a child's welfare, to the guardian ad litem and attorneys in the juvenile court in which a case is pending involving the child or family who is the subject of the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, or violation of statute, rules, or regulations by an employee of the department, the juvenile services division, the commission, a private agency, a licensed child care facility, or another provider that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer may not further distribute the report or any confidential information contained in the report.

Source: Laws 2012, LB821, § 34; Laws 2015, LB347, § 20; Laws 2017, LB207, § 5.

43-4328 Report; director, probation administrator, or executive director; accept, reject, or request modification; when final; written response; corrected report; credentialing issue; how treated.

(1) Within fifteen days after a report is presented to the director, the probation administrator, or the executive director under section 43-4327, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The written response may include corrections of factual errors. The Inspector General, with input from the Public Counsel, may consider the director's, probation administrator's, or executive director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director, the probation administrator, or the executive director to accept or reject the recommendations in the report or, if the director, the probation administrator, or the executive director requests modifications, within fifteen days after such

request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) After the recommendations have been accepted, rejected, or modified, the report shall be presented to the foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within thirty days after receipt of the report, the foster parent, private agency, licensed child care facility, or other provider may submit a written response to the office to correct any factual errors in the report and shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section, or if the corrected report does not address all issues raised in the written response, the foster parent, private agency, licensed child care facility, or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

(4) A report which raises issues related to credentialing under the Uniform Credentialing Act shall be submitted to the appropriate credentialing board under the act.

Source: Laws 2012, LB821, § 35; Laws 2015, LB347, § 21; Laws 2017, LB207, § 6.

Cross References

Uniform Credentialing Act, see section 38-101.

43-4331 Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of the Legislature, the Judiciary Committee of the Legislature, the Supreme Court, and the Governor a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year. The summary provided to the committees shall be provided electronically. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committees regarding issues discovered through investigation, audits, inspections, and reviews by the office that will increase accountability and legislative oversight of the Nebraska child welfare system, improve operations of the department, the juvenile services division, the commission, and the Nebraska child welfare system, or deter and identify fraud, abuse, and illegal acts. Such summary shall include summaries of alternative response cases under alternative response implemented in accordance with sections 28-710.01, 28-712, and 28-712.01 reviewed by the Inspector General. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2012, LB821, § 38; Laws 2013, LB222, § 12; Laws 2014, LB853, § 29; Laws 2015, LB347, § 23; Laws 2020, LB1061, § 9.

43-4332 Disclosure of information by employee; personnel actions prohibited.

Any person who has authority to recommend, approve, direct, or otherwise take or affect personnel action shall not, with respect to such authority:

(1) Take personnel action against an employee because of the disclosure of information by the employee to the office which the employee reasonably believes evidences wrongdoing under the Office of Inspector General of Nebraska Child Welfare Act;

(2) Take personnel action against an employee as a reprisal for the submission of an allegation of wrongdoing under the act to the office by such employee; or

(3) Take personnel action against an employee as a reprisal for providing information or testimony pursuant to an investigation by the office.

Source: Laws 2017, LB207, § 7.

ARTICLE 44

CHILD WELFARE SERVICES

Section

43-4401 Terms, defined.

For purposes of sections 43-4401 to 43-4407:

(1) Department means the Department of Health and Human Services; and

(2) Service area means a geographic area administered by the department and designated pursuant to section 81-3116.

Source: Laws 2012, LB1160, § 1; Laws 2022, LB1173, § 11.
Operative date July 21, 2022.

43-4402 Legislative findings.

The Legislature finds that the department needs a uniform electronic data collection system to collect and evaluate data regarding children served, the quality of child welfare services provided, and the outcomes produced by such child welfare services.

Source: Laws 2012, LB1160, § 2; Laws 2022, LB1173, § 12.
Operative date July 21, 2022.

43-4403 Legislative intent.

It is the intent of the Legislature:

(1) To provide for (a) legislative oversight of the child welfare system through an improved electronic data collection system, (b) improved child welfare outcome measurements through increased reporting by the department, and (c) an independent evaluation of the child welfare system; and

(2) To develop an electronic data collection system to integrate child welfare information into one system to more effectively manage, track, and share information, especially in child welfare case management.

Source: Laws 2012, LB1160, § 3; Laws 2022, LB1173, § 13.
Operative date July 21, 2022.

43-4406 Child welfare services; report; contents.

On or before each September 15, the department shall report electronically to the Health and Human Services Committee of the Legislature the following information regarding child welfare services, with respect to children served by the department:

(1) The percentage of children served and the allocation of the child welfare budget, categorized by service area, including:

(a) The percentage of children served, by service area and the corresponding budget allocation; and

(b) The percentage of children served who are wards of the state and the corresponding budget allocation;

(2) The number of siblings in out-of-home care placed with siblings as of the June 30 immediately preceding the date of the report, categorized by service area;

(3) The number of waivers granted under subsection (2) of section 71-1904;

(4) An update of the information in the report of the Children's Behavioral Health Task Force pursuant to sections 43-4001 to 43-4003, including:

(a) The number of children receiving mental health and substance abuse services annually by the Division of Behavioral Health of the department;

(b) The number of children receiving behavioral health services annually at the Hastings Regional Center;

(c) The number of state wards receiving behavioral health services as of September 1 immediately preceding the date of the report;

(d) Funding sources for children's behavioral health services for the fiscal year ending on the immediately preceding June 30;

(e) Expenditures in the immediately preceding fiscal year by the division, categorized by category of behavioral health service and by behavioral health region; and

(f) Expenditures in the immediately preceding fiscal year from the medical assistance program and CHIP as defined in section 68-969 for mental health and substance abuse services, for all children and for wards of the state;

(5) The following information as obtained for each service area:

(a) Case manager education, including college degree, major, and level of education beyond a baccalaureate degree;

(b) Average caseload per case manager;

(c) Average number of case managers per child during the preceding twelve months;

(d) Average number of case managers per child for children who have been in the child welfare system for three months, for six months, for twelve months, and for eighteen months and the consecutive yearly average for children until the age of majority or permanency is attained;

(e) Monthly case manager turnover;

(f) Monthly face-to-face contacts between each case manager and the children on his or her caseload;

(g) Monthly face-to-face contacts between each case manager and the parent or parents of the children on his or her caseload;

(h) Case documentation of monthly consecutive team meetings per quarter;

(i) Case documentation of monthly consecutive parent contacts per quarter;

(j) Case documentation of monthly consecutive child contacts with case manager per quarter;

(k) Case documentation of monthly consecutive contacts between child welfare service providers and case managers per quarter;

(l) Timeliness of court reports; and

(m) Non-court-involved children, including the number of children served, the types of services requested, the specific services provided, the cost of the services provided, and the funding source;

(6) All placements in residential treatment settings made or paid for by the child welfare system, the Office of Juvenile Services, the State Department of Education or local education agencies, and the medical assistance program, including, but not limited to:

(a) Child variables;

(b) Reasons for placement;

(c) The percentage of children denied medicaid-reimbursed services and denied the level of placement requested;

(d) With respect to each child in a residential treatment setting:

(i) If there was a denial of initial placement request, the length and level of each placement subsequent to denial of initial placement request and the status of each child before and immediately after, six months after, and twelve months after placement;

(ii) Funds expended and length of placements;

(iii) Number and level of placements;

(iv) Facility variables; and

(v) Identification of specific child welfare services unavailable in the child's community that, if available, could have prevented the need for residential treatment; and

(e) Identification of child welfare services unavailable in the state that, if available, could prevent out-of-state placements;

(7) For any individual involved in the child welfare system receiving a service or a placement through the department or its agent for which referral is necessary, the date when such referral was made by the department or its agent and the date and the method by which the individual receiving the services was

notified of such referral. To the extent the department becomes aware of the date when the individual receiving the referral began receiving such services, the department or its agent shall document such date;

(8) The number of sexual abuse allegations that occurred for children being served by the Division of Children and Family Services of the Department of Health and Human Services and placed at a residential child-caring agency and the number of corresponding (a) screening decision occurrences by category, (b) open investigations by category, and (c) agency substantiations, court substantiations, and court-pending status cases; and

(9) Information on children who are reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor, as defined in section 28-830, including:

(a) The number of reports to the statewide toll-free number pursuant to section 28-711 alleging sex trafficking of a minor or labor trafficking of a minor and the number of children alleged to be victims;

(b) The number of substantiated victims of sex trafficking of a minor or labor trafficking of a minor, including demographic information and information on whether the children were already served by the department;

(c) The number of children determined to be reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor, including demographic information and information on whether the children were previously served by the department;

(d) The types and costs of services provided to children who are reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor; and

(e) The number of ongoing cases opened due to allegations of sex trafficking of a minor or labor trafficking of a minor and number of children and families served through these cases.

Source: Laws 2012, LB1160, § 6; Laws 2013, LB222, § 13; Laws 2017, LB417, § 6; Laws 2018, LB1078, § 5; Laws 2019, LB519, § 15; Laws 2022, LB1173, § 14.
Operative date July 21, 2022.

43-4407 Service area administrator; annual survey; duties; reports.

(1) Each service area administrator shall annually survey children, parents, foster parents, judges, guardians ad litem, attorneys representing parents, and service providers involved with the child welfare system to monitor satisfaction with (a) adequacy of communication by the case manager, (b) response by the department to requests and problems, (c) transportation issues, (d) medical and psychological services for children and parents, (e) visitation schedules, (f) payments, (g) support services to foster parents, (h) adequacy of information about foster children provided to foster parents, and (i) the case manager's fulfillment of his or her responsibilities. A summary of the survey shall be reported electronically to the Health and Human Services Committee of the Legislature on September 15, 2012, and each September 15 thereafter.

(2) Each service area administrator shall provide monthly reports to the child advocacy center that corresponds with the geographic location of the child regarding the services provided through the department when the child is identified as a voluntary or non-court-involved child welfare case. The monthly

report shall include the plan implemented by the department for the child and family and the status of compliance by the family with the plan. The child advocacy center shall report electronically to the Health and Human Services Committee of the Legislature on September 15, 2012, and every September 15 thereafter, or more frequently if requested by the committee.

Source: Laws 2012, LB1160, § 7; Laws 2013, LB222, § 14; Laws 2022, LB1173, § 15.
Operative date July 21, 2022.

43-4408 Repealed. Laws 2022, LB1173, § 23.
Operative date July 21, 2022.

43-4409 Repealed. Laws 2022, LB1173, § 23.
Operative date July 21, 2022.

43-4411 Child welfare system; legislative findings and intent.

(1) The Legislature finds that the State of Nebraska, in order to support the well-being, permanency, and safety of children and families in Nebraska's communities, needs to comprehensively transform its child welfare system. The Legislature further finds that this comprehensive transformation will require an integrated model addressing all aspects of the system and strong partnerships among the legislative, executive, and judicial branches of government and community stakeholders.

(2) It is the intent of the Legislature to:

(a) Establish an intersectoral child welfare practice model work group;

(b) Establish appropriate strategic leadership and guidance for practice and finance model development from across the three branches of government; and

(c) Appropriate funds for contractual support to build the practice and finance model for Nebraska.

Source: Laws 2022, LB1173, § 1.
Operative date April 20, 2022.

43-4412 Child welfare system; terms, defined.

For purposes of sections 43-4411 to 43-4416:

(1) Child welfare system means children and families receiving, and persons providing or effecting:

(a) In-home and out-of-home child welfare case management services;

(b) Physical and behavioral health care;

(c) Youth rehabilitation and treatment center services;

(d) Adoption or guardianship assistance services;

(e) Prevention services;

(f) Post-adoption or post-guardianship related services; and

(g) Public or private education and training services;

(2) Individual with lived experience in the child welfare system means an individual who has previously received services from the child welfare system, currently receives such services, or is at risk of needing such services and who has valuable insight to contribute;

(3) Practice and finance model means an evidence-based or evidence-informed approach to the practice and financing of the child welfare system across the State of Nebraska;

(4) Strategic leadership group means the child welfare strategic leadership group created in section 43-4414; and

(5) Work group means the child welfare practice model work group created in section 43-4413.

Source: Laws 2022, LB1173, § 2.
Operative date April 20, 2022.

43-4413 Child welfare system; work group; established; duties.

(1) There is hereby established a child welfare practice model work group. The work group may include, but is not limited to:

(a) The Director of Behavioral Health of the Division of Behavioral Health or the director's designee;

(b) The Director of Children and Family Services of the Division of Children and Family Services or the director's designee;

(c) The Director of Developmental Disabilities of the Division of Developmental Disabilities or the director's designee;

(d) The Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care or the director's designee;

(e) The Director of Public Health of the Division of Public Health or the director's designee;

(f) The Commissioner of Education or the commissioner's designee;

(g) The State Court Administrator;

(h) A representative of the state judicial branch to be appointed by the Chief Justice; and

(i) Representatives from each federally recognized Indian tribe within the State of Nebraska, appointed by each tribe's Tribal Council or Executive Committee.

(2) The work group shall develop a practice and finance model for child welfare system transformation in Nebraska, with consultation from key stakeholders, judges from separate juvenile courts and judges of county courts sitting as juvenile courts, private child welfare providers, individuals with lived experience in the child welfare system, the Nebraska Children's Commission, the Inspector General of Nebraska Child Welfare, the Foster Care Review Office, child advocacy centers, law enforcement, and county attorneys. The practice and finance model shall include, but not be limited to:

(a) Development of a statewide mission and vision for the child welfare system in Nebraska;

(b) Development of values and practice priorities for the child welfare system in Nebraska;

(c) Development of statewide program goals and a practice and finance model for child welfare system case management and service delivery;

(d) Development of engagement strategies to support community involvement in child welfare system transformation;

(e) Development of strategies that strengthen relationships across the court system, probation, executive branch agencies, the State Department of Education, and community partners;

(f) Development of strategies that support integration across agencies;

(g) Development of accountabilities across the entire child welfare system;

(h) Evaluation of the state's Title IV-E claiming practices and identification of appropriate steps to optimize federal reimbursement for child welfare system expenditures;

(i) Opportunities and financial mechanisms for providers to pilot innovative solutions to meet program goals; and

(j) Development of a strategy for data collection and outcome monitoring.

(3) The work group shall provide monthly updates to the strategic leadership group.

Source: Laws 2022, LB1173, § 3.
Operative date April 20, 2022.

43-4414 Child welfare system; strategic leadership group; members.

There is hereby established a child welfare strategic leadership group. The strategic leadership group shall be a nonvoting group that exists for purposes of receiving updates on the work group's activities. The strategic leadership group shall consist of:

(1) The chairperson of the Judiciary Committee of the Legislature;

(2) The chairperson of the Health and Human Services Committee of the Legislature;

(3) The Chief Justice or the Chief Justice's designee; and

(4) The chief executive officer of the Department of Health and Human Services or such officer's designee.

Source: Laws 2022, LB1173, § 4.
Operative date April 20, 2022.

43-4415 Child welfare system; work group; consultant; submit practice and finance model framework.

(1) The Department of Health and Human Services shall contract with an outside consultant with expertise in child welfare system transformation by December 15, 2022. The consultant shall assist the work group with the development of a written framework for the practice and finance model.

(2) On or before December 1, 2023, the work group shall electronically submit the written practice and finance model framework to the Health and Human Services Committee of the Legislature.

Source: Laws 2022, LB1173, § 5.
Operative date April 20, 2022.

43-4416 Child welfare system; work group; strategic leadership group; termination.

The work group and strategic leadership group shall terminate on December 31, 2023.

Source: Laws 2022, LB1173, § 6.
Operative date April 20, 2022.

ARTICLE 45

YOUNG ADULT BRIDGE TO INDEPENDENCE ACT

Section

43-4502 Purpose of act.

The purpose of the Young Adult Bridge to Independence Act is to support former state or tribal wards in transitioning to adulthood, becoming self-sufficient, and creating permanent relationships. The bridge to independence program shall at all times recognize and respect the autonomy of the young adult. Nothing in the Young Adult Bridge to Independence Act shall be construed to abrogate any other rights that a person who has attained eighteen or nineteen years of age may have as an adult under state or tribal law.

Source: Laws 2013, LB216, § 2; Laws 2014, LB853, § 31; Laws 2020, LB848, § 3.

43-4503 Terms, defined.

For purposes of the Young Adult Bridge to Independence Act:

(1) Age of eligibility means:

(a) Nineteen years of age; or

(b) Eighteen years of age if the young adult has attained the age of majority under tribal law;

(2) Bridge to independence program means the extended services and support available to a young adult under the Young Adult Bridge to Independence Act other than extended guardianship assistance described in section 43-4511 and extended adoption assistance described in section 43-4512;

(3) Child means an individual who has not attained twenty-one years of age;

(4) Department means the Department of Health and Human Services;

(5) Supervised independent living setting means an independent supervised setting, consistent with 42 U.S.C. 672(c). Supervised independent living settings shall include, but not be limited to, single or shared apartments, houses, host homes, college dormitories, or other postsecondary educational or vocational housing;

(6) Voluntary services and support agreement means a voluntary placement agreement as defined in 42 U.S.C. 672(f) between the department and a young adult as his or her own guardian; and

(7) Young adult means an individual who has attained the age of eligibility but who has not attained twenty-one years of age.

Source: Laws 2013, LB216, § 3; Laws 2014, LB853, § 32; Laws 2015, LB243, § 15; Laws 2020, LB848, § 4.

43-4504 Bridge to independence program; availability.

The bridge to independence program is available, on a voluntary basis, to a young adult:

(1) Who has attained the age of eligibility;

(2) Who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 or the equivalent under tribal law or who was adjudicated to be a juvenile described in subdivision (8) of section 43-247 or the equivalent under tribal law if the young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years and (a) who, upon attaining the age of eligibility, was in an out-of-home placement or had been discharged to independent living or (b) with respect to whom a kinship guardianship assistance agreement or an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement or a state-funded adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective;

(3) Who is:

(a) Completing secondary education or an educational program leading to an equivalent credential;

(b) Enrolled in an institution which provides postsecondary or vocational education;

(c) Employed for at least eighty hours per month;

(d) Participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) Incapable of doing any of the activities described in subdivisions (3)(a) through (d) of this section due to a medical condition, which incapacity is supported by regularly updated information in the case plan of the young adult;

(4) Who is a Nebraska resident, except that this requirement shall not disqualify a young adult who was a Nebraska resident but was placed outside Nebraska pursuant to the Interstate Compact for the Placement of Children; and

(5) Who does not meet the level of care for a nursing facility as defined in section 71-424, for a skilled nursing facility as defined in section 71-429, or for

an intermediate care facility for persons with developmental disabilities as defined in section 71-421.

The changes made to subdivision (2)(b) of this section by Laws 2015, LB243, become operative on July 1, 2015.

Source: Laws 2013, LB216, § 4; Laws 2014, LB853, § 33; Laws 2015, LB243, § 16; Laws 2019, LB600, § 11; Laws 2020, LB848, § 5.

Cross References

Interstate Compact for the Placement of Children, see section 43-1103.

43-4508 Department; filing with juvenile court; contents; jurisdiction of court; bridge to independence program file; hearing for permanency review; appointment of hearing officer; department; duties; court review services and support; confidentiality; waiver.

(1) Within fifteen days after the voluntary services and support agreement is signed, the department shall file a petition with the juvenile court describing the young adult's current situation, including the young adult's name, date of birth, and current address and the reasons why it is in the young adult's best interests to participate in the bridge to independence program. The department shall also provide the juvenile court with a copy of the signed voluntary services and support agreement, a copy of the case plan, and any other information the department or the young adult wants the court to consider.

(2) The department shall ensure continuity of care and eligibility by working with a child who wants to participate in the bridge to independence program and is likely to be eligible to participate in such program immediately following the termination of the juvenile court's jurisdiction pursuant to subdivision (3)(a) of section 43-247 or subdivision (8) of section 43-247 if the young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years. The voluntary services and support agreement shall be signed and the petition filed with the court upon the child's nineteenth birthday or within ten days thereafter. There shall be no interruption in the foster care maintenance payment and medical assistance coverage for a child who is eligible and chooses to participate in the bridge to independence program immediately following the termination of the juvenile court's jurisdiction pursuant to subdivision (3)(a) of section 43-247.

(3) The court has the jurisdiction to review the voluntary services and support agreement signed by the department and the young adult under section 43-4506 and to conduct permanency reviews as described in this section. Upon the filing of a petition under subsection (1) of this section, the court shall open a bridge to independence program file for the young adult for the purpose of determining whether continuing in such program is in the young adult's best interests and for the purpose of conducting permanency reviews.

(4) The court shall make the best interests determination as described in subsection (3) of this section not later than one hundred eighty days after the young adult and the department enter into the voluntary services and support agreement.

(5) The court shall conduct a hearing for permanency review consistent with 42 U.S.C. 675(5)(C) as described in subsection (6) of this section regarding the voluntary services and support agreement at least once per year and may conduct such hearing at additional times, but not more times than is reasonably

practicable, at the request of the young adult, the department, or any other party to the proceeding. The court shall make a reasonable effort finding required by subdivision (6)(c) of this section within twelve months after the court makes its best interests determination under subsection (4) of this section. Upon the filing of the petition as provided in subsection (1) of this section or anytime thereafter, the young adult may request, in the voluntary services and support agreement or by other appropriate means, a timeframe in which the young adult prefers to have the permanency review hearing scheduled and the court shall seek to accommodate the request as practicable and consistent with 42 U.S.C. 675(5)(C). The juvenile court may request the appointment of a hearing officer pursuant to section 24-230 to conduct permanency review hearings. The department is not required to have legal counsel present at such hearings. The juvenile court shall conduct the permanency reviews in an expedited manner and shall issue findings and orders, if any, as speedily as possible.

(6)(a) The primary purpose of the permanency review is to ensure that the bridge to independence program is providing the young adult with the needed services and support to help the young adult move toward permanency and self-sufficiency. This shall include that, in all permanency reviews or hearings regarding the transition of the young adult from foster care to independent living, the court shall consult, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult. The young adult shall have a clear self-advocacy role in the permanency review in accordance with section 43-4510, and the hearing shall support the active engagement of the young adult in key decisions. Permanency reviews shall be conducted on the record and in an informal manner and, whenever possible, outside of the courtroom.

(b) The department shall prepare and present to the juvenile court a report, at the direction of the young adult, addressing progress made in meeting the goals in the case plan, including the independent living transition proposal, and shall propose modifications as necessary to further those goals.

(c) The court shall determine whether the bridge to independence program is providing the appropriate services and support as provided in the voluntary services and support agreement to carry out the case plan. The court shall also determine whether reasonable efforts have been made to achieve the permanency goal as set forth in the case plan and the department's report provided under subdivision (6)(b) of this section. The court shall issue specific written findings regarding such reasonable efforts. The court has the authority to determine whether the young adult is receiving the services and support he or she is entitled to receive under the Young Adult Bridge to Independence Act and the department's policies or state or federal law to help the young adult move toward permanency and self-sufficiency. If the court believes that the young adult requires additional services and support to achieve the goals documented in the case plan or under the Young Adult Bridge to Independence Act and the department's policies or state or federal law, the court may make appropriate findings or order the department to take action to ensure that the young adult receives the identified services and support.

(7) All pleadings, filings, documents, and reports filed pursuant to this section and subdivision (11) of section 43-247 shall be confidential. The proceedings pursuant to this section and subdivision (11) of section 43-247 shall be confidential unless a young adult provides a written waiver or a verbal waiver in

court. Such waiver may be made by the young adult in order to permit the proceedings to be held outside of the courtroom or for any other reason. The Foster Care Review Office shall have access to any and all pleadings, filings, documents, reports, and proceedings necessary to complete its case review process. This section shall not prevent the juvenile court from issuing an order identifying individuals and agencies who shall be allowed to receive otherwise confidential information for legitimate and official purposes as authorized by section 43-3001.

Source: Laws 2013, LB216, § 8; Laws 2014, LB853, § 37; Laws 2015, LB243, § 19; Laws 2019, LB600, § 12.

43-4510 Court-appointed attorney; continuation of guardian ad litem; independence coordinator; duties; notice; court appointed special advocate volunteer.

(1) If desired by the young adult, the young adult shall be provided a court-appointed attorney who has received training appropriate to the role. The attorney's representation of the young adult shall be client-directed. The attorney shall protect the young adult's legal rights and vigorously advocate for the young adult's wishes and goals, including assisting the young adult as necessary to ensure that the bridge to independence program is providing the young adult with the services and support required under the Young Adult Bridge to Independence Act. For young adults who were appointed a guardian ad litem before the young adult attained the age of eligibility, the guardian ad litem's appointment may be continued, with consent from the young adult, but under a client-directed model of representation. Before entering into a voluntary services and support agreement and at least sixty days prior to each permanency and case review, the independence coordinator shall notify the young adult of his or her right to request a client-directed attorney if the young adult would like an attorney to be appointed and shall provide the young adult with a clear and developmentally appropriate written notice regarding the young adult's right to request a client-directed attorney, the benefits and role of such attorney, and the specific steps to take to request that an attorney be appointed if the young adult would like an attorney appointed.

(2) The court has discretion to appoint a court appointed special advocate volunteer or continue the appointment of a previously appointed court appointed special advocate volunteer with the consent of the young adult.

Source: Laws 2013, LB216, § 10; Laws 2014, LB853, § 40; Laws 2020, LB848, § 6.

43-4511 Extended guardianship assistance and medical care; eligibility; use.

(1) The department shall provide extended guardianship assistance and medical care under the medical assistance program for a young adult who has attained the age of eligibility but is less than twenty-one years of age and with respect to whom a kinship guardianship assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective and if the young adult meets at least one of the following conditions for eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

(3) The changes made to this section by Laws 2015, LB243, become operative on July 1, 2015.

Source: Laws 2013, LB216, § 11; Laws 2014, LB853, § 41; Laws 2015, LB243, § 20; Laws 2020, LB848, § 7.

43-4511.01 Participation in extended guardianship or bridge to independence program; participation in extended adoption assistance or bridge to independence program; choice of participant; notice; contents; department; duties.

(1)(a) Young adults who are eligible to participate under both extended guardianship assistance as provided in section 43-4511 and the bridge to independence program as provided in subdivision (2)(b) of section 43-4504 may choose to participate in either program.

(b) Young adults who are eligible to participate under both extended adoption assistance as provided in section 43-4512 and the bridge to independence program as provided in subdivision (2)(b) of section 43-4504 may choose to participate in either program.

(2) The department shall create a clear and developmentally appropriate written notice discussing the rights of young adults who are eligible under both extended guardianship assistance and the bridge to independence program and a notice for young adults who are eligible under both extended adoption assistance and the bridge to independence program. The notice shall explain the benefits and responsibilities and the process to apply. The department shall provide the written notice and make efforts to provide a verbal explanation to a young adult with respect to whom a kinship guardianship assistance agreement or an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement or state-funded adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective. The department shall provide the notice yearly thereafter until such young adult reaches nineteen years of age and not later than ninety days prior to the young adult attaining nineteen years of age.

Source: Laws 2015, LB243, § 21; Laws 2019, LB600, § 13.

43-4512 Extended adoption assistance and medical care; eligibility; use.

(1) The department shall provide extended adoption assistance and medical care under the medical assistance program for a young adult who has attained the age of eligibility but is less than twenty-one years of age and with respect to whom an adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective and who meets at least one of the following conditions of eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The adoptive parent or parents shall ensure that any adoption assistance funds provided by the department and received by the adoptive parent shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

Source: Laws 2013, LB216, § 12; Laws 2014, LB853, § 42; Laws 2015, LB243, § 22; Laws 2020, LB848, § 8.

43-4513 Bridge to Independence Advisory Committee; created; members; terms; duties; report; contents.

(1) The Bridge to Independence Advisory Committee is created within the Nebraska Children's Commission to advise and make recommendations to the Legislature and the Nebraska Children's Commission regarding ongoing implementation of the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512. The Bridge to Independence Advisory Committee shall provide a written report regarding ongoing implementation, including participation in the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 and early discharge rates and reasons obtained from the department, to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by September 1 of each year. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

(2) The members of the Bridge to Independence Advisory Committee shall include, but not be limited to, (a) representatives from all three branches of government, and the representatives from the legislative and judicial branches of government shall be nonvoting, ex officio members, (b) no less than three young adults currently or previously in foster care, which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) one or more representatives from a child welfare advocacy

organization, (d) one or more representatives from a child welfare service agency, and (e) one or more representatives from an agency providing independent living services.

(3) Members of the committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the committee and may fill vacancies on the committee as they occur.

Source: Laws 2013, LB216, § 13; Laws 2014, LB853, § 43; Laws 2015, LB243, § 23; Laws 2018, LB732, § 4; Laws 2019, LB600, § 14.

43-4514 Department; submit amended state plan amendment to seek federal funding; department; duties; rules and regulations; references to United States Code; how construed.

(1) The department shall submit an amended state plan amendment by October 15, 2019, to seek federal Title IV-E funding under 42 U.S.C. 672 for any newly eligible young adult who was adjudicated to be a juvenile described in subdivision (8) of section 43-247 if such young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after the young adult had attained the age of sixteen years and for any newly eligible young adult with respect to whom an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the child had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded adoption assistance agreement was in effect if the child had attained sixteen years of age before the agreement became effective pursuant to subdivision (2)(b) of section 43-4504.

(2) The department shall implement the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 in accordance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. 673 and 42 U.S.C. 675(8)(B) and in accordance with requirements necessary to obtain federal Title IV-E funding under 42 U.S.C. 672 and 42 U.S.C. 673.

(3) The department shall adopt and promulgate rules and regulations as needed to carry out this section by October 15, 2015.

(4) All references to the United States Code in the Young Adult Bridge to Independence Act refer to sections of the code as such sections existed on January 1, 2015.

Source: Laws 2013, LB216, § 14; Laws 2014, LB853, § 44; Laws 2015, LB243, § 24; Laws 2019, LB600, § 15.

ARTICLE 47

NEBRASKA STRENGTHENING FAMILIES ACT

Section
43-4701. Act, how cited.
43-4702. Legislative findings and intent.
43-4703. Terms, defined.
43-4704. Rights of child; requirements for a driver's license.
43-4706. Department; duties; contract requirements; caregiver; duties; written notice posted; normalcy plan; contents; normalcy report; contents.
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43-4714. Rules and regulations.
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43-4701 Act, how cited.

Sections 43-4701 to 43-4716 shall be known and may be cited as the Nebraska Strengthening Families Act.

Source: Laws 2016, LB746, § 1; Laws 2017, LB225, § 8; Laws 2019, LB600, § 16.

43-4702 Legislative findings and intent.

The Legislature finds that every day a parent makes important decisions about his or her child's participation in activities and that a caregiver for a child in out-of-home care is faced with making the same decisions for a child in his or her care.

The Legislature also finds that, when a caregiver makes decisions, he or she must consider applicable laws, rules, and regulations to safeguard the health and safety of a child in out-of-home care and that those laws, rules, and regulations have commonly been interpreted to prohibit children in out-of-home care from participating in extracurricular, enrichment, cultural, and social activities.

The Legislature further finds that participation in these types of activities is important to a child's well-being, not only emotionally, but in developing valuable life skills.

It is the intent of the Legislature to recognize the importance of parental rights and the different rights that exist dependent on a variety of factors, including the age and maturity of the child, the status of the case, and the child's placement.

It is the intent of the Legislature to recognize the importance of race, culture, and identity for children in out-of-home care.

It is the intent of the Legislature to recognize the importance of making every effort to normalize the lives of children in out-of-home care and to empower a caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard.

It is the intent of the Legislature to implement the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, as such act existed on January 1, 2016.

Source: Laws 2016, LB746, § 2; Laws 2017, LB225, § 9.

43-4703 Terms, defined.

For purposes of the Nebraska Strengthening Families Act:

(1) Age or developmentally appropriate means activities or items that are generally accepted as suitable for a child of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group and, in the case of a

specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child;

(2) Caregiver means a foster parent with whom a child in foster care has been placed or a designated official for a child-care institution in which a child in foster care has been placed;

(3) Child-care institution has the definition found in 42 U.S.C. 672(c), as such section existed on January 1, 2016, and also includes the definition of residential child-caring agency as found in section 71-1926;

(4) Department means the Department of Health and Human Services;

(5) Foster family home has the definition found in 42 U.S.C. 672(c), as such section existed on January 1, 2017, and also includes the definition as found in section 71-1901;

(6) Probation means the Office of Probation Administration; and

(7) Reasonable and prudent parent standard means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interest of a child while at the same time encouraging the emotional and developmental growth of the child that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities.

Source: Laws 2016, LB746, § 3; Laws 2017, LB225, § 10.

43-4704 Rights of child; requirements for a driver's license.

(1) Every child placed by the department in a foster family home or child-care institution shall be entitled to access to reasonable opportunities to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.

(2) A child in foster care shall not be required, by virtue of his or her status as a child in foster care, to meet any more requirements for a driver's license under the Motor Vehicle Operator's License Act than any other child applying for the same license.

Source: Laws 2016, LB746, § 4; Laws 2017, LB225, § 11; Laws 2020, LB219, § 2.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

43-4706 Department; duties; contract requirements; caregiver; duties; written notice posted; normalcy plan; contents; normalcy report; contents.

(1) The department shall ensure that each foster family home and child-care institution has policies consistent with this section and that such foster family home and child-care institution promote and protect the ability of children to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.

(2) A caregiver shall use a reasonable and prudent parent standard in determining whether to give permission for a child to participate in extracurricular, enrichment, cultural, and social activities. The caregiver shall take reason-

able steps to determine the appropriateness of the activity in consideration of the child's age, maturity, and developmental level.

(3) The department shall require, as a condition of each contract entered into by a child-care institution to provide foster care, the presence onsite of at least one official who, with respect to any child placed at the child-care institution, is designated to be the caregiver who is (a) authorized to apply the reasonable and prudent parent standard to decisions involving the participation of the child in age or developmentally appropriate activities, (b) provided with training in how to use and apply the reasonable and prudent parent standard in the same manner as foster parents are provided training in section 43-4707, and (c) required to consult whenever possible with the child and staff members identified by the child in applying the reasonable and prudent parent standard.

(4) The department shall also require, as a condition of each contract entered into by a child-care institution to provide foster care, that all children placed at the child-care institution be notified verbally and in writing, in an age or developmentally appropriate manner, of the process for making a request to participate in age or developmentally appropriate activities and that a written notice of this process be posted in an accessible, public place in the child-care institution.

(5)(a) The department shall also require, as a condition of each contract entered into by a child-care institution to provide foster care, a written normalcy plan describing how the child-care institution will ensure that all children have access to age or developmentally appropriate activities to be filed with the department and a normalcy report regarding the implementation of the normalcy plan to be filed with the department annually by June 30. Such plans and reports shall not be required to be provided by child-care institutions physically located outside the State of Nebraska or psychiatric residential treatment facilities.

(b) The normalcy plan shall specifically address:

(i) Efforts to address barriers to normalcy that are inherent in a child-care institution setting;

(ii) Normalcy efforts for all children placed at the child-care institution, including, but not limited to, relationships with family, age or developmentally appropriate access to technology and technological skills, education and school stability, access to health care and information, and access to a sustainable and durable routine;

(iii) Procedures for developing goals and action steps in the child-care institution's case plan and case planning process related to participation in age or developmentally appropriate activities for each child placed at the child-care institution;

(iv) Policies on staffing, supervision, permission, and consent to age or developmentally appropriate activities consistent with the reasonable and prudent parent standard;

(v) A list of activities that the child-care institution provides onsite and a list of activities in the community regarding which the child-care institution will make children aware, promote, and support access;

(vi) Identified accommodations and support services so that children with disabilities and special needs can participate in age or developmentally appropriate activities to the same extent as their peers;

(vii) The individualized needs of all children involved in the system;

(viii) Efforts to reduce disproportionate impact of the system and services on families and children of color and other populations; and

(ix) Efforts to develop a youth board to assist in implementing the reasonable and prudent parent standard in the child-care institution and promoting and supporting normalcy.

(c) The normalcy report shall specifically address:

(i) Compliance with each of the plan requirements set forth in subdivisions (b)(i) through (ix) of this subsection; and

(ii) Compliance with subsections (3) and (4) of this section.

(6) The department shall make normalcy plans and reports received from contracting child-care institutions pursuant to subsection (5) of this section and plans and reports from all youth rehabilitation and treatment centers pursuant to subsection (7) of this section available upon request to the Nebraska Strengthening Families Act Committee, the Nebraska Children's Commission, probation, the Governor, and electronically to the Health and Human Services Committee of the Legislature, by September 1 of each year.

(7) All youth rehabilitation and treatment centers shall meet the requirements of subsection (5) of this section.

Source: Laws 2016, LB746, § 6; Laws 2017, LB225, § 12.

43-4707 Training for foster parents.

The department shall adopt and promulgate rules and regulations regarding training for foster parents so that foster parents will be prepared adequately with the appropriate knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities, including knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of the child and knowledge and skills related to applying the standard to decisions such as whether to allow the child to engage in extracurricular, enrichment, cultural, and social activities, including sports, field trips, and overnight activities lasting one or more days and to decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, cultural, and social activities. The department shall also adopt and promulgate rules and regulations regarding training for foster parents on recognizing human trafficking, including both sex trafficking and labor trafficking.

Source: Laws 2016, LB746, § 7; Laws 2017, LB225, § 13.

43-4709 Parental rights; consultation with parent; documentation; family team meeting.

(1) Nothing in the Nebraska Strengthening Families Act or the application of the reasonable and prudent parent standard shall affect the parental rights of a parent whose parental rights have not been terminated pursuant to section 43-292 with respect to his or her child.

(2) To the extent possible, a parent shall be consulted about the child's participation in age or developmentally appropriate activities in the planning

process. The department shall document such consultation in the report filed pursuant to subsection (3) of section 43-285.

(3) The child's participation in extracurricular, enrichment, cultural, and social activities shall be considered at any family team meeting.

Source: Laws 2016, LB746, § 9; Laws 2017, LB225, § 14.

43-4714 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Nebraska Strengthening Families Act and shall revoke any rules or regulations inconsistent with the act by October 15, 2017.

Source: Laws 2016, LB746, § 14; Laws 2017, LB225, § 16.

43-4715 Missing child; department and probation; duties.

The department and probation shall establish procedures for the immediate dissemination of a current picture and information about a child who is missing from a foster care or out-of-home placement to appropriate third parties, which may include law enforcement agencies or persons engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public. Any information released to a third party under this section shall be subject to state and federal confidentiality laws and shall not include that the child is under the care, custody, or supervision of the department or under the supervision of probation. Such dissemination by probation shall be authorized by an order of a judge or court.

Source: Laws 2017, LB225, § 15.

43-4716 Nebraska Strengthening Families Act Committee; created; duties; members; term; vacancy; report; contents.

(1) The Nebraska Strengthening Families Act Committee is created.

(2) The Nebraska Strengthening Families Act Committee shall monitor and make recommendations regarding the implementation in Nebraska of the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, as such act existed on January 1, 2017, and the Nebraska Strengthening Families Act.

(3) The members of the committee shall include, but not be limited to, (a) representatives from the legislative, executive, and judicial branches of government. The representatives from the legislative and judicial branches shall be nonvoting, ex officio members, (b) no fewer than three young adults currently or previously in foster care which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) a representative from the juvenile probation system, (d) the executive director of the Foster Care Review Office, (e) one or more representatives from a child welfare advocacy organization, (f) one or more representatives from a child welfare service agency, (g) one or more representatives from an agency providing independent living services, (h) one or more representatives of a child-care institution as defined in section 43-4703, (i) one or more current or former foster parents, (j) one or more parents who have experience in the foster care system, (k) one or more professionals who have relevant practical experience such as a caseworker, and (l) one or more guardians ad litem who practice in juvenile court.

(4) Members shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint a chairperson or chairpersons of the committee and may fill vacancies on the committee as such vacancies occur.

(5) The committee shall provide a written report with recommendations regarding the initial and ongoing implementation of the federal Preventing Sex Trafficking and Strengthening Families Act, as such act existed on January 1, 2017, and the Nebraska Strengthening Families Act and related efforts to improve normalcy for children in foster care and related populations to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the Department of Health and Human Services, and the Governor by September 1 of each year. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

Source: Laws 2016, LB746, § 23; Laws 2017, LB225, § 7; Laws 2018, LB732, § 3; R.S.Supp.,2018, § 43-4218; Laws 2019, LB600, § 17.

ARTICLE 48

JUDICIAL EMANCIPATION OF A MINOR

Section

43-4801 Procedure.

Sections 43-4801 to 43-4812 provide a procedure for judicial emancipation of a minor.

Source: Laws 2018, LB714, § 1.

43-4802 Petition authorized.

A minor who is at least sixteen years of age, who is married or living apart from his or her parents or legal guardian, and who is a legal resident may file a petition in the district court of his or her county of residence for a judgment of emancipation. The petition shall be signed and verified by the minor.

Source: Laws 2018, LB714, § 2.

43-4803 Petition; contents.

A petition for emancipation filed pursuant to section 43-4802 shall state:

(1) The name, age, and address of the minor;

(2) The names and addresses of the parents of the minor, if known;

(3) The name and address of any legal guardian of the minor, if known;

(4) If the name or address of a parent or legal guardian is unknown, the name and address of the child's nearest known relative residing within this state;

(5) Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding, if known;

(6) The state, county, and case number of any court case in which an order of support has been entered, if known;

(7) That the minor is seeking a judgment of emancipation;

(8) That the minor is filing the petition as a free and voluntary act; and

(9) Specific facts to support the petition, including:

(a) That the minor willingly lives apart from his or her parents or legal guardian;

(b) That the minor is able to support himself or herself without financial assistance, or, in the alternative, the minor has no parent, legal guardian, or custodian who is providing support;

(c) That the minor is mature and knowledgeable to manage his or her affairs without the guidance of a parent or legal guardian;

(d) That the minor has demonstrated an ability and commitment to obtain and maintain education, vocational training, or employment;

(e) The reasons why emancipation would be in the best interests of the minor; and

(f) The purposes for which emancipation is requested.

Source: Laws 2018, LB714, § 3.

43-4804 Hearing.

Upon the filing of a petition for emancipation, the court shall fix a time for a hearing on the petition. The hearing shall be held not less than forty-five days and not more than sixty days after the filing of such petition unless any party for good cause shown requests a continuance of the hearing or all parties agree to a continuance.

Source: Laws 2018, LB714, § 4.

43-4805 Notice; service.

(1) Upon filing a petition pursuant to section 43-4804, and at least thirty days prior to the hearing date, the petitioner shall serve a notice of filing, together with a copy of the petition for emancipation and a summons to appear at the hearing, upon:

(a) The parents or legal guardian of the minor or, if the parents or legal guardian cannot be found, the nearest known relative of the minor residing within the state, if any; and

(b) The legal custodian of the minor, if any.

(2) Service and summons shall be made in accordance with section 25-505.01.

(3) Upon a motion and showing by affidavit that service cannot be made with reasonable diligence by any other method provided by statute, the court may

permit service to be made (a) by leaving the process at the party's usual place of residence and mailing a copy by first-class mail to the party's last-known address, (b) by publication, or (c) by any manner reasonably calculated under the circumstances to provide the party with actual notice of the proceedings and an opportunity to be heard.

Source: Laws 2018, LB714, § 5.

43-4806 Summons to appear; service.

Upon filing the petition, a notice of filing, together with a copy of the petition for emancipation and a summons to appear at the hearing, shall be served:

(1)(a) Upon the parents or legal guardian of the minor or, if the parents or legal guardian cannot be found, the nearest known relative of the minor residing within the state, if any; and

(b) Upon the legal custodian of the minor, if any; or

(2) By publication pursuant to section 25-519, if service pursuant to subdivision (1) of this section is not possible.

Source: Laws 2018, LB714, § 6.

43-4807 Hearing on merits of petition.

The court shall hold a hearing on the merits of the petition no sooner than forty-five days after the date of filing but within sixty days after the date of its filing. The petitioner shall notify by certified mail the petitioner's parent or legal guardian or the petitioner's nearest known relative residing within the state, whichever is given notice under section 43-4806, if any, and the petitioner's legal custodian, if any, of the time, date, and place of the hearing at least thirty days prior to the hearing date. Proof of such notice shall be filed prior to the hearing on the petition. For good cause shown, the court may continue the initial emancipation hearing.

Source: Laws 2018, LB714, § 7.

43-4808 Objection to petition.

The minor's parent or legal guardian and the minor's legal custodian may file an objection to the petition for emancipation within thirty days of service of the notice of the hearing.

Source: Laws 2018, LB714, § 8.

43-4809 Burden of proof; advisement by court; judgment of emancipation.

(1) The minor has the burden of proving by clear and convincing evidence that the requirements for ordering emancipation under this section have been met. Prior to entering a judgment of emancipation, the court shall advise the minor of the consequences of emancipation, including, but not limited to, the benefits and services available to an emancipated minor and the risks involved with being emancipated. Such advisements shall include, at a minimum, the words to the following effect:

(a) If you become emancipated, you will have some of the rights that come with adulthood. These rights include: Handling your own affairs; living where you choose; entering into contracts; keeping and spending your money; making decisions regarding your own health care, medical care, dental care, and

mental health care, without parental knowledge; enlisting in the military without your parent's consent; marrying without your parent's consent; applying for public assistance; suing someone or being sued; enrolling in school or college; and owning real property;

(b) Even if you are emancipated, you still must: Stay in school as required by Nebraska law; be subject to child labor laws and work permit rules limiting the number of hours you can work; and be of legal age to consume alcohol; and

(c) When you become emancipated: You lose your right to have financial support for basic living expenses for food, clothing, and shelter, and health care paid for by your parents or guardian; your parents or guardian will no longer be legally or financially responsible if you injure someone; and being emancipated does not automatically make you eligible for public assistance or benefits.

(2) If, after hearing, the court determines that emancipation is in the best interests of the minor and that the minor understands his or her rights and responsibilities under sections 43-4801 to 43-4812 as an emancipated minor, the court shall enter a judgment of emancipation. In making its determination regarding the petition for emancipation, the court shall determine whether the petitioner has proven each of the facts set forth in subdivision (9) of section 43-4803.

Source: Laws 2018, LB714, § 9.

43-4810 Judgment of emancipation; effect; certified copy; use by third party.

(1) A judgment of emancipation removes the disability of minority insofar as that disability may affect: (a) Establishment of his or her own residence; (b) incurring indebtedness or contractual obligations of any kind; (c) consenting to medical, dental, or psychiatric care without the consent, knowledge, or liability of parents or a guardian; (d) enlisting in the military without a parent's or guardian's consent; (e) marrying without a parent's or guardian's consent; (f) being individually eligible for public assistance; (g) the litigation and settlement of controversies; (h) enrolling in any school or college; and (i) acquiring, encumbering, and conveying property or any interest therein. For the purposes described in this subsection, the minor shall be considered in law as an adult and any obligation or benefit he or she incurs is enforceable by and against such minor without regard to his or her minority.

(2) A minor emancipated by court order shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, gambling, use of tobacco, and other health and safety regulations relevant to the minor because of his or her age.

(3) The emancipated minor shall be provided a certified copy of the judgment of emancipation at the time the judgment is entered. Upon presentation of the judgment of emancipation, a third party shall be allowed to retain a copy of the same as proof of the minor's ability to act as stated in this section.

(4) Unless otherwise provided in the judgment of emancipation, the judgment of emancipation shall explicitly suspend any order regarding custody, parenting time, or support of the minor and be reported by the district court clerk to the jurisdiction that issued such order.

Source: Laws 2018, LB714, § 10.

43-4811 Effect on prosecution of criminal offense.

An emancipated minor shall not be considered an adult for prosecution of a criminal offense.

Source: Laws 2018, LB714, § 11.

43-4812 Rescission; motion; grounds; when granted; hearing; notice; effect on prior order of custody, parenting time, or support.

(1) A motion for rescission may be filed by any interested person or public agency in order to rescind a judgment of emancipation on the following grounds:

(a) The minor has become indigent and has insufficient means of support; or

(b) The judgment of emancipation was obtained by fraud, misrepresentation, or the withholding of material information.

(2) The motion for rescission shall be filed in the district court in which the petition for emancipation was filed. The motion for rescission of a judgment of emancipation shall be granted if it is proven:

(a) That rescinding the judgment of emancipation is in the best interests of the emancipated minor; and

(b)(i) That the minor has become indigent and has insufficient means of support; or

(ii) That the judgment of emancipation was obtained by fraud, misrepresentation, or the withholding of material information.

(3) Upon the filing of a motion for rescission, the court shall fix a time for a hearing on the motion. The hearing shall be held not less than forty-five days and not more than sixty days after the filing of such motion unless any party for good cause shown requests a continuance of the hearing or all parties agree to a continuance.

(4)(a) Upon filing a motion pursuant to subsection (3) of this section, and at least thirty days prior to the hearing date, the movant shall serve a notice of filing, together with a copy of the motion for rescission and a summons to appear at the hearing, upon:

(i) The emancipated person;

(ii) The parents or the person who was the legal guardian of the emancipated person or, if the parents or legal guardian cannot be found, the nearest known relative of the emancipated person residing within the state, if any; and

(iii) The legal custodian of the emancipated person prior to emancipation, if any.

(b) Service and summons shall be made in accordance with section 25-505.01.

(c) Upon a motion and showing by affidavit that service cannot be made with reasonable diligence by any other method provided by statute, the court may permit service to be made (i) by leaving the process at the party's usual place of residence and mailing a copy by first-class mail to the party's last-known address, (ii) by publication, or (iii) by any manner reasonably calculated under the circumstances to provide the party with actual notice of the proceedings and an opportunity to be heard.

(d) The emancipated minor may file a written response objecting to the motion to rescind emancipation within thirty days after service of the notice of the hearing.

(5) If, after hearing, the court determines by clear and convincing evidence that rescinding the judgment of emancipation is in the best interests of the minor because the minor has become indigent and has insufficient means of support, or because the judgment of emancipation was obtained by fraud, misrepresentation, or the withholding of material information, the court shall rescind the judgment of emancipation.

(6) If a prior order regarding custody, parenting time, or support of the minor was suspended by the judgment of emancipation, the order rescinding the judgment of emancipation shall be reported by the district court clerk to the jurisdiction that issued such order and shall serve to reinstate such prior order of custody, parenting time, or support.

(7) The parents or legal guardian or legal custodian of a minor emancipated by court order are not liable for any debts incurred by the minor child during the period of emancipation.

(8) Rescinding a judgment of emancipation does not affect an obligation, responsibility, right, or interest that arose during the period of time that the judgment of emancipation was in effect.

Source: Laws 2018, LB714, § 12.

CHAPTER 44
INSURANCE

Article.
3. General Provisions Relating to Insurance. 44-323, 44-361.
5. Standard Provisions and Forms. 44-513.
7. General Provisions Covering Life, Sickness, and Accident Insurance. 44-792 to 44-7,118.
21. Holding Companies. 44-2121 to 44-2138.
40. Insurance Producers Licensing Act. 44-4052, 44-4068.
46. Pharmacy Benefit Managers. 44-4601 to 44-4612.
51. Investments. 44-5103 to 44-5153.
90. Risk Management and Own Risk and Solvency Assessment Act. 44-9004.
93. Travel Insurance Act. 44-9301 to 44-9310.

ARTICLE 3
GENERAL PROVISIONS RELATING TO INSURANCE

Section
44-323. Life insurance policy, disability insurance policy, or long-term care insurance policy; living organ donor; treatment.
44-361. Rebates; prohibited; activities not considered a rebate; permitted conduct.

44-323 Life insurance policy, disability insurance policy, or long-term care insurance policy; living organ donor; treatment.

(1) For purposes of this section:

(a) Insurance coverage means coverage under a disability insurance, life insurance, or long-term care insurance policy; and

(b) Living organ donor means an individual who:

(i) Has donated all or part of an organ; and

(ii) Is not deceased.

(2) It shall be unlawful for an insurer to deny insurance coverage, cancel insurance coverage, or determine the price or premium for, refuse to issue, or otherwise vary any term or condition of a life insurance policy, disability insurance policy, or long-term care insurance policy solely on the basis of an individual's status as a living organ donor and without any unique and material actuarial risks in accordance with sound actuarial principles and actual and reasonably anticipated and expected experiences of such individual on the basis of the individual's status as a living organ donor.

Source: Laws 2022, LB863, § 18.
Operative date July 21, 2022.

44-361 Rebates; prohibited; activities not considered a rebate; permitted conduct.

(1) No insurance company, by itself or any other party, and no insurance agent or broker, personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy, or of any policy, or agent's commission thereon, or

earnings, profits, dividends, or other benefits founded, arising, accruing or to accrue thereon or therefrom, or any paid employment or contract for service, or for advice of any kind, or any other valuable consideration or inducement to, or for insurance, on any risk authorized to be taken under section 44-201 now or hereafter to be written, which is not specified in the policy contract of insurance. No such company, agent, or broker, personally or otherwise, shall offer, promise, give, sell or purchase any stock, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, or other things of value whatsoever, as inducement to insurance or in connection therewith, which is not specified in the policy. No insured person or party shall receive or accept, directly or indirectly, any rebate of premium, or part thereof, or agent's or broker's commission thereon, payable on the policy, or on any policy of insurance, or any favor or advantage or share in the dividends or other benefits to accrue on, or any valuable consideration or inducement not specified in the policy contract of insurance.

(2) Extending of interest-free credit on life and liability insurance premiums or interest-free credit on crop hail insurance premiums shall not be considered a rebate of the premium for purposes of this section.

(3) Payments made pursuant to the Nebraska Right to Shop Act shall not be considered a rebate of the premium for purposes of this section.

(4)(a) The offer or provision by an insurance company or an agent or broker, by or through employees, affiliates, or third-party representatives, of value-added products or services at no or reduced cost when such products or services are not specified in the policy of insurance shall not be prohibited by this section if the product or service:

(i) Relates to the insurance coverage; and

(ii) Is primarily designed to satisfy one or more of the following:

(A) Provide loss mitigation or loss control;

(B) Reduce claim costs or claim settlement costs;

(C) Provide education about liability risks or risk of loss to persons or property;

(D) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(E) Enhance health;

(F) Enhance financial wellness through items such as education or financial planning services;

(G) Provide post-loss services;

(H) Incent behavioral changes to improve the health or reduce the risk of death or disability of a customer; or

(I) Assist in the administration of the employee or retiree benefit insurance coverage.

(b) The cost to the insurance company or agent or broker offering the product or service to any given customer shall be reasonable in comparison to that customer's premiums or insurance coverage for the policy class.

(c) If the insurance company or agent or broker is providing the product or service offered, the insurance company or agent or broker shall ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.

(d) The Director of Insurance may adopt and promulgate rules and regulations when implementing the permitted practices set forth in this subsection to ensure consumer protection. Such rules and regulations, consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

(e) The availability of the value-added product or service shall be based on documented objective criteria and offered in a manner that is not unfairly discriminatory. The documented criteria shall be maintained by the insurance company or agent or broker and produced upon request by the Department of Insurance.

(f) If an insurance company or agent or broker does not have sufficient evidence, but has a good-faith belief that the product or service will achieve the purpose for which such product or service was primarily designed under subdivision (4)(a)(ii) of this section, the insurance company or agent or broker may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for no more than one year. An insurance company or an agent or broker shall notify the Department of Insurance of any such pilot or testing program offered to consumers in this state prior to launching such pilot or testing program and may proceed with the program unless the department objects within twenty-one days of such notice.

(5) Notwithstanding the other provisions of this section, an insurance company or an agent or broker may:

(a) Offer or give noncash gifts, items, or services, including meals to or charitable donations on behalf of a customer, in connection with the marketing, sale, purchase, or retention of contracts of insurance, as long as the cost does not exceed an amount determined to be reasonable by the Director of Insurance, per policy year per term. The offer shall be made in a manner that is not unfairly discriminatory. The customer shall not be required to purchase, continue to purchase, or renew a policy in exchange for the gift, item, or service; and

(b) Conduct drawings or raffles to the extent permitted by state law, as long as there is no financial cost to entrants to participate, the drawing or raffle does not obligate participants to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the Director of Insurance, and the drawing or raffle is open to the public. The drawing or raffle must be offered in a manner that is not unfairly discriminatory. The customer shall not be required to purchase, continue to purchase, or renew a policy in order to participate in the drawing or raffle or in exchange for the drawing or raffle prize.

(6) For purposes of subsections (4) and (5) of this section, customer means a policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured, or applicant.

Source: Laws 1913, c. 154, § 140, p. 466; R.S.1913, § 3277; Laws 1919, c. 190, tit. V, art. XI, § 5, p. 648; C.S.1922, § 7884; C.S.1929, § 44-1105; R.S.1943, § 44-361; Laws 1961, c. 220, § 1, p. 653; Laws 1971, LB 137, § 1; Laws 1972, LB 1354, § 2; Laws 2018, LB1119, § 25; Laws 2022, LB863, § 19.
Operative date July 21, 2022.

Cross References

Nebraska Right to Shop Act, see section 44-1401.

ARTICLE 5
STANDARD PROVISIONS AND FORMS

Section
44-513. Osteopathic medicine and surgery, chiropractic, optometry, psychology, dentistry, podiatry, or mental health service; policy; provisions.

44-513 Osteopathic medicine and surgery, chiropractic, optometry, psychology, dentistry, podiatry, or mental health service; policy; provisions.

Whenever any insurer provides by contract, policy, certificate, or any other means whatsoever for a service, or for the partial or total reimbursement, payment, or cost of a service, to or on behalf of any of its policyholders, group policyholders, subscribers, or group subscribers or any person or group of persons, which service may be legally performed by a person licensed in this state for the practice of osteopathic medicine and surgery, chiropractic, optometry, psychology, dentistry, podiatry, or mental health practice or by a person who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact, the person rendering such service or such policyholder, subscriber, or other person shall be entitled to such partial or total reimbursement, payment, or cost of such service, whether the service is performed by a duly licensed medical doctor or by a duly licensed osteopathic physician, chiropractor, optometrist, psychologist, dentist, podiatrist, or mental health practitioner or duly privileged professional counselor. This section shall not limit the negotiation of preferred provider policies and contracts under sections 44-4101 to 44-4113.

Source: Laws 1967, c. 258, § 1, p. 681; Laws 1969, c. 372, § 1, p. 1330; Laws 1974, LB 712, § 1; Laws 1975, LB 190, § 1; Laws 1984, LB 902, § 15; Laws 1989, LB 342, § 2; Laws 1994, LB 1222, § 50; Laws 1995, LB 473, § 1; Laws 2022, LB752, § 26.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

ARTICLE 7
GENERAL PROVISIONS COVERING LIFE, SICKNESS, AND ACCIDENT INSURANCE

Section
44-792. Mental health conditions; terms, defined.
44-7,102. Coverage for screening for colorectal cancer.
44-7,118. Coverage for services performed by rural emergency hospital; requirements.

44-792 Mental health conditions; terms, defined.

For purposes of sections 44-791 to 44-795:

(1) Health insurance plan means (a) any group sickness and accident insurance policy, group health maintenance organization contract, or group subscriber contract delivered, issued for delivery, or renewed in this state and (b)

any self-funded employee benefit plan to the extent not preempted by federal law. Health insurance plan includes any group policy, group contract, or group plan offered or administered by the state or its political subdivisions. Health insurance plan does not include group policies providing coverage for a specified disease, accident-only coverage, hospital indemnity coverage, disability income coverage, medicare supplement coverage, long-term care coverage, or other limited-benefit coverage. Health insurance plan does not include any policy, contract, or plan covering an employer group that covers fewer than fifteen employees;

(2) Mental health condition means any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in the Mental Disorders Section of the International Classification of Disease;

(3) Mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act, or (d) a professional counselor who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact;

(4) Rate, term, or condition means lifetime limits, annual payment limits, and inpatient or outpatient service limits. Rate, term, or condition does not include any deductibles, copayments, or coinsurance; and

(5)(a) Serious mental illness means, prior to January 1, 2002, (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder; and

(b) Serious mental illness means, on and after January 1, 2002, any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes, but is not limited to (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder.

Source: Laws 1999, LB 355, § 2; Laws 2007, LB463, § 1135; Laws 2018, LB1034, § 48; Laws 2022, LB752, § 27.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Psychology Interjurisdictional Compact, see section 38-3901.

44-7,102 Coverage for screening for colorectal cancer.

(1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for short-term major medical policies of six months or less duration and policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee

benefit plan to the extent not preempted by federal law shall include screening coverage for a colorectal cancer examination and laboratory tests for cancer for any nonsymptomatic person forty-five years of age or older covered under such policy, certificate, contract, or plan. Such screening coverage shall include a maximum of one screening fecal occult blood test annually and a flexible sigmoidoscopy every five years, a colonoscopy every ten years, or a barium enema every five to ten years, or any combination, or the most reliable, medically recognized screening test available. The screenings selected shall be as deemed appropriate by a health care provider and the patient.

(2) This section does not prevent application of deductible or copayment provisions contained in the policy, certificate, contract, or employee benefit plan or require that such coverage be extended to any other procedures.

Source: Laws 2007, LB247, § 86; Laws 2022, LB863, § 20.
Operative date July 21, 2022.

44-7,118 Coverage for services performed by rural emergency hospital; requirements.

Any individual or group sickness and accident insurance policy or subscriber contract, nonprofit hospital or medical service policy or plan contract, or health maintenance organization contract and any self-funded employee benefit plan to the extent not preempted by federal law or exempted by state law shall provide benefits for services when performed by a licensed rural emergency hospital if such services would be covered under such policies, contracts, or coverage if performed by a general hospital.

Source: Laws 2022, LB697, § 8.
Effective date July 21, 2022.

ARTICLE 21

HOLDING COMPANIES

Section
44-2121. Terms, defined.
44-2132. Registration of insurers; filings required; director or commissioner; powers.
44-2138. Information; confidential treatment; sharing of information; restrictions.

44-2121 Terms, defined.

For purposes of the Insurance Holding Company System Act:

(1) An affiliate of, or person affiliated with, a specific person means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(2) Control, including controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (11) of section 44-2132 that control does not exist in fact. The director may determine, after furnishing

all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(3) Director means the Director of Insurance;

(4) Director or commissioner of the lead state means the director or commissioner of insurance in the lead state for the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;

(5) Enterprise risk means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 44-6011 or would cause the insurer to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition;

(6) Group capital calculation instructions means the group capital calculation instructions as adopted by the National Association of Insurance Commissioners and amended from time to time in accordance with its adopted procedures;

(7) Group-wide supervisor means the chief insurance regulatory official, including the director, who (a) is authorized to conduct and coordinate group-wide supervision activities of an international insurance group and (b) is from the jurisdiction determined or acknowledged by the director under section 44-2155 to have sufficient contacts with the international insurance group;

(8) An insurance holding company system shall consist of two or more affiliated persons, one or more of which is an insurer;

(9) Insurer has the same meaning as in section 44-103, except that insurer does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(10) International insurance group means an insurance holding company system that has been determined by the director to be an international insurance group under section 44-2154;

(11) NAIC Liquidity Stress Test Framework means a separate publication of the National Association of Insurance Commissioners which includes a history of the National Association of Insurance Commissioners' development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year;

(12) Person means an individual, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of such entities acting in concert but does not include any joint-venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property;

(13) Scope criteria means, as detailed in the NAIC Liquidity Stress Test Framework, the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of

insurers considered scoped into the NAIC Liquidity Stress Test Framework for such data year;

(14) Security holder of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any such stock or obligations;

(15) Subsidiary of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries; and

(16) Voting security includes any security convertible into or evidencing a right to acquire a voting security.

Source: Laws 1991, LB 236, § 2; Laws 2001, LB 360, § 13; Laws 2012, LB887, § 4; Laws 2016, LB772, § 11; Laws 2022, LB863, § 21. Operative date July 21, 2022.

44-2132 Registration of insurers; filings required; director or commissioner; powers.

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director, except that registration shall not be required for a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section, subsection (1) of section 44-2133, sections 44-2134 and 44-2136, and either subsection (2) of section 44-2133 or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by May 1 of each year for the previous calendar year unless the director for good cause shown extends the time for such initial or annual registration and then within such extended time. The director may require any insurer which is authorized to do business in the state, which is a member of an insurance holding company system, and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement with the director on a form and in a format prescribed by the National Association of Insurance Commissioners which shall contain the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(e) If requested by the director, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the director with the most recently filed parent corporation financial statements that have been filed with the Securities and Exchange Commission;

(f) Statements that show that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

(g) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director; and

(h) Any other information required by rules and regulations which the director may adopt and promulgate.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) It shall not be necessary to disclose on the registration statement information which is not material for the purposes of this section. Unless the director by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section. Such exclusion from the definition of material shall not apply for purposes of group capital calculation instructions or the NAIC Liquidity Stress Test Framework.

(5) Subject to the requirements of section 44-2134, each registered insurer shall give notice to the director of all dividends and other distributions to shareholders within five business days following the declaration thereof and

shall not pay any such dividends or other distributions to shareholders within ten business days following receipt of such notice by the director unless for good cause shown the director has approved such payment within such ten-business-day period.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer when such information is reasonably necessary to enable the insurer to comply with the Insurance Holding Company System Act.

(7) The director shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section shall not apply to any insurer, information, or transaction if and to the extent that the director by rule, regulation, or order exempts the same from this section.

(11) Any person may file with the director a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the director, within thirty days after receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. If the disclaimer is disallowed, the disclaiming party may request and shall be entitled to an administrative hearing. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the director or if the disclaimer is deemed to have been approved.

(12) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the director or commissioner of the lead state.

(13)(a) Except as otherwise provided in this section, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the director or commissioner of the lead state. The annual group capital calculation shall be completed in accordance with the group capital calculation instructions, which may permit the director or commissioner of the lead state to allow a controlling person that is not the ultimate controlling person to file the annual group capital calculation. The annual group capital calculation shall be filed with the director or commissioner of the lead state. The following insurance holding company systems shall be exempt from filing an annual group capital calculation:

(i) An insurance holding company system that has only one insurer within its holding company structure, only writes business and is only licensed in its domestic state, and assumes no business from any other insurer;

(ii) An insurance holding company system that is required to perform a group capital calculation specified by the Federal Reserve Board. The director or commissioner of the lead state shall request the calculation from the Federal Reserve Board under the terms of information-sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the director or commissioner of the lead state, the insurance holding company system is not exempt from the annual group capital calculation filing requirement;

(iii) An insurance holding company system whose non-United-States group-wide supervisor is located within a reciprocal jurisdiction as described in subdivision (7)(a)(i) of section 44-416.06 that recognizes the state regulatory approach to group supervision and group capital of the United States; and

(iv) An insurance holding company system:

(A) That provides information to the director or commissioner of the lead state that meets the requirements for accreditation under the financial standards and accreditation program of the National Association of Insurance Commissioners, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the director or commissioner of the lead state to comply with the group supervision approach of the National Association of Insurance Commissioners, as detailed in the Financial Analysis Handbook of the National Association of Insurance Commissioners; and

(B) Whose non-United-States group-wide supervisor, that is not in a reciprocal jurisdiction, recognizes and accepts, as provided in subsection (15) of this section, the group capital calculation as the worldwide group capital assessment for United States' insurance groups who operate in that jurisdiction.

(b) Notwithstanding subdivisions (13)(a)(iii) and (iv) of this section, the director or commissioner of the lead state shall require the filing of the annual group capital calculation for the United States operations of any non-United-States-based insurance holding company system if, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the director or commissioner of the lead state for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(c) Notwithstanding the exemptions from filing the annual group capital calculation stated in subdivisions (13)(a)(i) through (iv) of this section, the director or commissioner of the lead state has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing in accordance with subsection (14) of this section.

(d) If the director or commissioner of the lead state determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the annual group capital calculation under this subsection, the insurance holding company system shall file the annual group capital calculation at the next annual filing date unless given an extension by the director or commissioner of the lead state based on reasonable grounds shown.

(14)(a) The director or commissioner of the lead state has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the director or commissioner of the lead state determines that:

(i) The holding company system has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and the national flood insurance program, of less than one billion dollars;

(ii) The holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(iii) The holding company system has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

(iv) The holding company system attests that there are no material changes in the transactions between insurers and noninsurers in the group; and

(v) The noninsurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(b) The director or commissioner of the lead state has the discretion to accept, in lieu of the group capital calculation, a limited group capital filing if the holding company system:

(i) Has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and the national flood insurance program, of less than one billion dollars;

(ii) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(iii) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and

(iv) Attests that there are no material changes in transactions between insurers and noninsurers in the group that have occurred and the noninsurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

(c) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subdivisions (14)(a) and (b) of this section, the director or commissioner of the lead state may require, at any time, the ultimate controlling person to file an annual group capital calculation, completed in accordance with the group capital calculation instructions, if:

(i) Any insurer within the insurance holding company system is in a risk-based capital company action level event as set forth in section 44-6016 or a similar standard for a non-United-States insurer;

(ii) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition; or

(iii) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the director or commissioner of the lead state based on unique circumstances, including, but

not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(15) A non-United-States jurisdiction is considered to recognize and accept the group capital calculation if:

(a) For annual group capital calculations under subdivision (13)(a)(iv) of this section:

(i) The non-United-States jurisdiction recognizes the United States state regulatory approach to group supervision and group capital by providing confirmation by a competent regulatory authority in such jurisdiction that insurers and insurance groups whose lead state is accredited by the National Association of Insurance Commissioners under its accreditation program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-United-States jurisdiction; or

(ii) The non-United-States jurisdiction, if such jurisdiction has no United States insurance groups operating in such jurisdiction, indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. Such writing will serve as the documentation otherwise required in subdivision (15)(a)(i) of this section; or

(b) The non-United-States jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the director or commissioner of the lead state in accordance with a memorandum of understanding or similar document between the director and such jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the National Association of Insurance Commissioners. The director shall determine, in consultation with the National Association of Insurance Commissioners, if the requirements of the information-sharing agreements are in force.

(16)(a) A list of non-United-States jurisdictions that recognize and accept the group capital calculation shall be published through the National Association of Insurance Commissioners committee process.

(b) A list of jurisdictions that recognize and accept the group capital calculation pursuant to subdivision (13)(a)(iv) of this section shall be published in accordance with the National Association of Insurance Commissioners committee process to assist the director or commissioner of the lead state in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempt from filing under subdivision (13)(a)(iv) of this section. To assist with a determination under subdivision (13)(b) of this section, the list will also identify whether a jurisdiction that is exempt under subdivision (13)(a)(iii) or (iv) of this section requires a group capital filing for any United-States-based insurance group's operations in that non-United-States jurisdiction.

(c) For a non-United-States jurisdiction where no United States insurance groups operate, the confirmation provided to meet the requirement of subdivision (15)(a)(ii) of this section will serve as support for a recommendation that such non-United-States jurisdiction be published as a jurisdiction that recognizes and accepts the group capital calculation through the National Association of Insurance Commissioners committee process.

(d) If the director or commissioner of the lead state makes a determination pursuant to subdivision (13)(a)(iv) of this section that differs from the National Association of Insurance Commissioners list, the director or commissioner of the lead state shall provide thoroughly documented justification to the National Association of Insurance Commissioners and other states.

(e) Upon determination by the director or commissioner of the lead state that a non-United-States jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the director or commissioner of the lead state may provide a recommendation to the National Association of Insurance Commissioners that the non-United-States jurisdiction be removed from the list of jurisdictions that recognize and accept the group capital calculation.

(17)(a) The ultimate controlling person of every insurer that is subject to registration and scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific data year's liquidity stress test. The filing shall be made to the director or commissioner of the lead state.

(b) The NAIC Liquidity Stress Test Framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the Financial Stability Task Force of the National Association of Insurance Commissioners or any successor to the task force. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria shall be considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the director or commissioner of the lead state, in consultation with the Financial Stability Task Force of the National Association of Insurance Commissioners or any successor to the task force, determines the insurer should not be scoped into the framework for such data year. Similarly, insurers that do not meet at least one threshold of the scope criteria shall be considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year unless the director or commissioner of the lead state, in consultation with the Financial Stability Task Force or any successor to the task force, determines the insurer should be scoped into the framework for that data year.

(c) In order for regulators to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis, the director or commissioner of the lead state, in consultation with the Financial Stability Task Force or any successor to the task force, shall assess this concern as part of the determination for an insurer.

(d) The performance of, and filing of the results from, a liquidity stress test for a specific data year shall comply with the instructions and reporting templates for the NAIC Liquidity Stress Test Framework for such data year and any determinations made by the director or commissioner of the lead state, in

consultation with the Financial Stability Task Force or any successor to the task force, provided within the NAIC Liquidity Stress Test Framework.

(18) The failure to file a registration statement or any summary of the registration statement thereto or enterprise risk report required by this section within the time specified for such filing shall be a violation of this section.

Source: Laws 1991, LB 236, § 12; Laws 1996, LB 689, § 2; Laws 2005, LB 119, § 11; Laws 2012, LB887, § 8; Laws 2022, LB863, § 22. Operative date July 21, 2022.

44-2138 Information; confidential treatment; sharing of information; restrictions.

(1)(a) All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to section 44-2137 and all information reported or provided to the director pursuant to sections 44-2132 to 44-2136 and 44-2155 shall be recognized by this state as being proprietary and containing trade secrets, shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners and its affiliates and subsidiaries, or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

(b) For purposes of the information filed with the Director of Insurance pursuant to subsection (13) of section 44-2132, the director shall maintain the confidentiality of the annual group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or by any United States group-wide supervisor.

(c) For purposes of the information filed with the Director of Insurance pursuant to subsection (17) of section 44-2132, the director shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United-States group-wide supervisors.

(2) The director may receive information, documents, and copies of information and documents, including proprietary and trade secret information, disclosed to other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to an examination of an insurance holding company system. The director shall maintain information, documents, and copies of information and documents received pursuant to this subsection as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to

84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subsection, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subsection as a result of information sharing authorized by this section.

(3) In order to assist in the performance of the director's duties, the director may share information, including any proprietary or trade secret document or material, with state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, with any third-party consultant designated by the director, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 44-2137.01, with the International Association of Insurance Supervisors, and with the Bank for International Settlements under the conditions set forth in section 44-154 if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or information and has verified in writing the legal authority to maintain confidentiality. The director may only share any confidential and privileged document, material, or information filed pursuant to subsection (12) of section 44-2132 with directors or commissioners of states having statutes or regulations substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such document, material, or information.

(4) The director shall enter into written agreements with the National Association of Insurance Commissioners and any third-party consultant designated by the director governing sharing and use of any document, material, or information provided pursuant to this section that shall:

(a) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or any third-party consultant designated by the director pursuant to this section, including procedures and protocols for sharing by the association or any third-party consultant designated by the director with other state, federal, or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of any such document, material, or information and has verified in writing the legal authority to maintain such confidentiality;

(b) Specify that ownership of any document, material, or information shared with the National Association of Insurance Commissioners or any third-party consultant designated by the director pursuant to this section remains with the director and use of any document, material, or information by the association or any third-party consultant designated by the director is subject to the direction of the director;

(c) Prohibit the National Association of Insurance Commissioners or any third-party consultant designated by the director from storing any document, material, or information shared pursuant to this section in a permanent database after the underlying analysis is completed. This subdivision does not apply to any document, material, or information filed pursuant to subsection (17) of section 44-2132;

(d) Require prompt notice to be given to an insurer whose confidential document, material, or information in the possession of the National Association of Insurance Commissioners or any third-party consultant designated by the director pursuant to this section is subject to a request or subpoena to the association or any third-party consultant designated by the director for disclosure or production;

(e) Require the National Association of Insurance Commissioners or any third-party consultant designated by the director to consent to intervention by an insurer in any judicial or administrative action in which the association or any third-party consultant designated by the director may be required to disclose confidential information about the insurer shared with the association or any third-party consultant designated by the director pursuant to this section; and

(f) For any document, material, or information filed pursuant to subsection (17) of section 44-2132, in the case of an agreement involving any third-party consultant designated by the director, provide for notification to the applicable insurers of the identity of such third-party consultant.

(5) The sharing of any document, material, or information by the director pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of this section.

(6) No waiver of any applicable privilege or claim of confidentiality in any document, material, or information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized by this section.

(7) Any document, material, or information in the possession or control of the National Association of Insurance Commissioners or any third-party consultant designated by the director pursuant to this section shall be confidential and privileged, shall not be subject to public disclosure under section 84-712, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

(8) The annual group capital calculation and resulting group capital ratio required under subsection (13) of section 44-2132 and the liquidity stress test along with its results and supporting disclosures required under subsection (17) of section 44-2132 shall be considered regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and shall not be used as a means to rank insurers or insurance holding company systems. Except as otherwise may be required under the Insurance Holding Company System Act, it is unlawful to make, publish, disseminate, circulate, place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the annual group capital calculation, the group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business, except that if any materially false statement with respect to the annual

group capital calculation, the resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's annual group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the director with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

Source: Laws 1991, LB 236, § 18; Laws 2001, LB 52, § 47; Laws 2012, LB887, § 13; Laws 2016, LB772, § 14; Laws 2022, LB863, § 23. Operative date July 21, 2022.

ARTICLE 40

INSURANCE PRODUCERS LICENSING ACT

Section
44-4052. Licensure examination; requirements.
44-4068. Repealed. Laws 2022, LB863, § 41.

44-4052 Licensure examination; requirements.

(1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 44-4056 or 44-4069 or subsection (4) of section 44-9304. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws, rules, and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations adopted and promulgated by the director.

(2) The director may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in section 44-4064.

(3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the director as set forth in section 44-4064.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Source: Laws 2001, LB 51, § 6; Laws 2015, LB458, § 4; Laws 2018, LB1012, § 3; Laws 2022, LB863, § 24.
Operative date January 1, 2023.

43-4068 Repealed. Laws 2022, LB863, § 41.
Operative date January 1, 2023.

ARTICLE 46

PHARMACY BENEFIT MANAGERS

Section
44-4601. Act, how cited.
44-4602. Act; purposes.

Section

44-4601 Act, how cited.

Sections 44-4601 to 44-4612 shall be known and may be cited as the Pharmacy Benefit Manager Licensure and Regulation Act.

Source: Laws 2022, LB767, § 1.
Operative date January 1, 2023.

44-4602 Act; purposes.

(1) The Pharmacy Benefit Manager Licensure and Regulation Act establishes the standards and criteria for the licensure and regulation of pharmacy benefit managers providing a claims processing service or other prescription drug or device service for a health benefit plan.

(2) The purposes of the act are to:

(a) Promote, preserve, and protect public health, safety, and welfare through effective regulation and licensure of pharmacy benefit managers;

(b) Promote the solvency of the commercial health insurance industry, the regulation of which is reserved to the states by the federal McCarran-Ferguson Act, 15 U.S.C. 1011 to 1015, as such act and sections existed on January 1, 2022, as well as provide for consumer savings and encourage fairness in prescription drug benefits;

(c) Provide for powers and duties of the director; and

(d) Prescribe monetary penalties for violations of the Pharmacy Benefit Manager Licensure and Regulation Act.

Source: Laws 2022, LB767, § 2.
Operative date January 1, 2023.

44-4603 Terms, defined.

For purposes of the Pharmacy Benefit Manager Licensure and Regulation Act:

(1) Auditing entity means a pharmacy benefit manager or any person that represents a pharmacy benefit manager in conducting an audit for compliance with a contract between the pharmacy benefit manager and a pharmacy;

(2) Claims processing service means an administrative service performed in connection with the processing and adjudicating of a claim relating to a pharmacist service that includes:

(a) Receiving a payment for a pharmacist service; or

(b) Making a payment to a pharmacist or pharmacy for a pharmacist service;

(3) Covered person means a member, policyholder, subscriber, enrollee, beneficiary, dependent, or other individual participating in a health benefit plan;

(4) Director means the Director of Insurance;

(5) Health benefit plan means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of a physical, mental, or behavioral health care service;

(6) Health carrier has the same meaning as in section 44-1303;

(7) Other prescription drug or device service means a service other than a claims processing service, provided directly or indirectly, whether in connection with or separate from a claims processing service, including, but not limited to:

(a) Negotiating a rebate, discount, or other financial incentive or arrangement with a drug company;

(b) Disbursing or distributing a rebate;

(c) Managing or participating in an incentive program or arrangement for a pharmacist service;

(d) Negotiating or entering into a contractual arrangement with a pharmacist or pharmacy;

(e) Developing and maintaining a formulary;

(f) Designing a prescription benefit program; or

(g) Advertising or promoting a service;

(8) Pharmacist has the same meaning as in section 38-2832;

(9) Pharmacist service means a product, good, or service or any combination thereof provided as a part of the practice of pharmacy;

(10) Pharmacy has the same meaning as in section 71-425;

(11)(a) Pharmacy benefit manager means a person, business, or entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefit manager, that provides a claims processing service or other prescription drug or device service for a health benefit plan to a covered person who is a resident of this state; and

(b) Pharmacy benefit manager does not include:

(i) A health care facility licensed in this state;

(ii) A health care professional licensed in this state;

(iii) A consultant who only provides advice as to the selection or performance of a pharmacy benefit manager; or

(iv) A health carrier to the extent that it performs any claims processing service or other prescription drug or device service exclusively for its enrollees; and

(12) Plan sponsor has the same meaning as in section 44-2702.

Source: Laws 2022, LB767, § 3.
Operative date January 1, 2023.

44-4604 Act; applicability; how construed; licensure conditions; contract requirements.

(1) The Pharmacy Benefit Manager Licensure and Regulation Act applies to any contract or health benefit plan issued, renewed, recredentialed, amended, or extended on or after January 1, 2023, including any health carrier that performs a claims processing service or other prescription drug or device service through a third party.

(2) As a condition of licensure, any contract in existence on the date a pharmacy benefit manager receives its license to do business in this state shall comply with the requirements of the act.

(3) Nothing in the act is intended or shall be construed to conflict with existing relevant federal law.

Source: Laws 2022, LB767, § 4.
Operative date January 1, 2023.

44-4605 License, required; application; fee; refusal to issue or renew; grounds; renewal; application; fee.

(1) A person shall not establish or operate as a pharmacy benefit manager in this state for a health benefit plan without first obtaining a license from the director under the Pharmacy Benefit Manager Licensure and Regulation Act.

(2) The director may adopt and promulgate rules and regulations establishing the licensing application, financial, and reporting requirements for pharmacy benefit managers under the act.

(3) A person applying for a pharmacy benefit manager license shall submit an application for licensure in the form and manner prescribed by the director.

(4) A person submitting an application for a pharmacy benefit manager license shall include with the application a nonrefundable application fee. The director shall establish the nonrefundable application fee in an amount not to exceed five hundred dollars.

(5) The director may refuse to issue or renew a license if the director determines that the applicant or any individual responsible for the conduct of affairs of the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation, has been found to have violated the insurance laws of this state or any other jurisdiction, or has had an insurance or other certificate of authority or license denied or revoked for cause by any jurisdiction.

(6)(a) Unless surrendered, suspended, or revoked by the director, a license issued under this section is valid as long as the pharmacy benefit manager continues to do business in this state and remains in compliance with the provisions of the act and any applicable rules and regulations, including the completion of a renewal application on a form prescribed by the director and payment of an annual license renewal fee. The director shall establish the annual license renewal fee in an amount not to exceed two hundred fifty dollars.

(b) Such application and renewal fee shall be received by the director on or before thirty days prior to the anniversary of the effective date of the pharmacy benefit manager's initial or most recent license.

Source: Laws 2022, LB767, § 5.
Operative date January 1, 2023.

44-4606 Participation contract; requirements; disclosure of information; limitations; contract termination; grounds; pharmacy benefit manager, prohibited acts.

(1) A participation contract between a pharmacy benefit manager and any pharmacist or pharmacy providing prescription drug coverage for a health benefit plan shall not prohibit or restrict any pharmacy or pharmacist from or penalize any pharmacy or pharmacist for disclosing to any covered person any health care information that the pharmacy or pharmacist deems appropriate regarding:

(a) The nature of treatment, risks, or an alternative to such treatment;

(b) The availability of an alternate therapy, consultation, or test;

(c) The decision of a utilization reviewer or similar person to authorize or deny a service;

(d) The process that is used to authorize or deny a health care service or benefit; or

(e) Information on any financial incentive or structure used by the health carrier.

(2) A pharmacy benefit manager shall not prohibit a pharmacy or pharmacist from discussing information regarding the total cost for a pharmacist service for a prescription drug or from selling a more affordable alternative to the covered person if a more affordable alternative is available.

(3) A pharmacy benefit manager contract with a participating pharmacist or pharmacy shall not prohibit, restrict, or limit disclosure of information to the director, law enforcement, or a state or federal governmental official, provided that:

(a) The recipient of the information represents that such recipient has the authority, to the extent provided by state or federal law, to maintain proprietary information as confidential; and

(b) Prior to disclosure of information designated as confidential, the pharmacist or pharmacy:

(i) Marks as confidential any document in which the information appears; or

(ii) Requests confidential treatment for any oral communication of the information.

(4) A pharmacy benefit manager shall not terminate the contract with or penalize a pharmacist or pharmacy due to the pharmacist or pharmacy:

(a) Disclosing information about a pharmacy benefit manager practice, except information determined to be a trade secret, as determined by state law or the director; or

(b) Sharing any portion of the pharmacy benefit manager contract with the director pursuant to a complaint or a query regarding whether the contract is

in compliance with the Pharmacy Benefit Manager Licensure and Regulation Act.

(5)(a) A pharmacy benefit manager shall not require a covered person purchasing a covered prescription drug to pay an amount greater than the lesser of the covered person's cost-sharing amount under the terms of the health benefit plan or the amount the covered person would pay for the drug if the covered person were paying the cash price.

(b) Any amount paid by a covered person under subdivision (5)(a) of this section shall be attributable toward any deductible or, to the extent consistent with section 2707 of the federal Public Health Service Act, 42 U.S.C. 300gg-6, as such section existed on January 1, 2022, the annual out-of-pocket maximum under the covered person's health benefit plan.

Source: Laws 2022, LB767, § 6.
Operative date January 1, 2023.

44-4607 Pharmacy audit; auditing entity; requirements; recoupment; terms and conditions; documentation requirements; appeal process; audit reports.

(1) Unless otherwise prohibited by federal law, an auditing entity conducting a pharmacy audit shall:

(a) Give any pharmacy notice fifteen business days prior to conducting an initial onsite audit;

(b) For any audit that involves clinical or professional judgment, conduct such audit by or in consultation with a pharmacist; and

(c) Audit each pharmacy under the same standards and parameters as other similarly situated pharmacies.

(2) Unless otherwise prohibited by federal law, for any pharmacy audit conducted by an auditing entity:

(a) The period covered by the audit shall not exceed twenty-four months from the date that the claim was submitted to the auditing entity, unless a longer period is required under state or federal law;

(b) If an auditing entity uses random sampling as a method for selecting a set of claims for examination, the sample size shall be appropriate for a statistically reliable sample;

(c) The auditing entity shall provide the pharmacy a masked list containing any prescription number or date range that the auditing entity is seeking to audit;

(d) No onsite audit shall take place during the first five business days of the month without the consent of the pharmacy;

(e) No auditor shall enter the area of any pharmacy where patient-specific information is available without being escorted by an employee of the pharmacy and, to the extent possible, each auditor shall remain out of the sight and hearing range of any pharmacy customer;

(f) No recoupment shall be deducted from or applied against a future remittance until after the appeal process is complete and both parties receive the results of the final audit;

(g) No pharmacy benefit manager shall require information to be written on a prescription unless such information is required to be written on the prescription by state or federal law;

(h) Recoupment may be assessed for information not written on a prescription if:

(i)(A) Such information is required in the provider manual; or

(B) The information is required by the federal Food and Drug Administration or the drug manufacturer's product safety program; and

(ii) The information required under subdivision (i)(A) or (B) of this subdivision (h) is not readily available for the auditing entity at the time of the audit; and

(i) No auditing entity or agent shall receive payment based on a percentage of any recoupment.

(3) For recoupment under the Pharmacy Benefit Manager Licensure and Regulation Act, the auditing entity shall:

(a) Include consumer-oriented parameters based on manufacturer listings in the audit parameters;

(b) Consider the pharmacy's usual and customary price for a compounded medication as the reimbursable cost, unless the pricing method is outlined in the pharmacy provider contract;

(c) Base a finding of overpayment or underpayment on the actual overpayment or underpayment and not a projection that relies on the number of patients served who have a similar diagnosis, the number of similar orders, or the number of refills for similar drugs;

(d) Not use extrapolation to calculate the recoupment or penalties unless required by state or federal law;

(e) Not include a dispensing fee in the calculation of an overpayment, unless a prescription was not actually dispensed, the prescriber denied authorization, the prescription dispensed was a medication error by the pharmacy, or the identified overpayment is solely based on an extra dispensing fee;

(f) Not consider as fraud any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error regarding a required document or record. Such error may be subject to recoupment;

(g) Not assess any recoupment in the case of an error that has no actual financial harm to the covered person or health benefit plan. An error that is the result of the pharmacy failing to comply with a formal corrective action plan may be subject to recoupment; and

(h) Not allow interest to accrue during the audit period for either party, beginning with the notice of the audit and ending with the final audit report.

(4)(a) To validate a pharmacy record and the delivery of a pharmacy service, the pharmacy may use an authentic and verifiable statement or record, including a medication administration record of a nursing home, assisted-living facility, hospital, physician, or other authorized practitioner or an additional audit documentation parameter located in the provider manual.

(b) Any legal prescription that meets the requirements in this section may be used to validate a claim in connection with a prescription, refill, or change in a prescription, including a medication administration record, fax, e-prescription, or documented telephone call from the prescriber to the prescriber's agent.

(5) The auditing entity conducting the audit shall establish a written appeal process which shall include procedures for appealing both a preliminary audit report and a final audit report.

(6)(a) A preliminary audit report shall be delivered to the pharmacy within one hundred twenty days after the conclusion of the audit.

(b) A pharmacy shall be allowed at least thirty days following receipt of a preliminary audit report to provide documentation to address any discrepancy found in the audit.

(c) A final audit report shall be delivered to the pharmacy within one hundred twenty days after receipt of the preliminary audit report or the appeal process has been exhausted, whichever is later.

(d) An auditing entity shall remit any money due to a pharmacy or pharmacist as the result of an underpayment of a claim within forty-five days after the appeal process has been exhausted and the final audit report has been issued.

(7) Where contractually required, an auditing entity shall provide a copy to the plan sponsor of any of the plan sponsor's claims that were included in the audit, and any recouped money shall be returned to the health benefit plan or plan sponsor.

(8) This section does not apply to any investigative audit that involves suspected fraud, willful misrepresentation, or abuse, or any audit completed by a state-funded health care program.

Source: Laws 2022, LB767, § 7.
Operative date January 1, 2023.

44-4608 Contract; pharmacy benefit manager; cost price list; duties; disputes; procedures.

(1) With respect to each contract and contract renewal between a pharmacy benefit manager and a pharmacy, the pharmacy benefit manager shall:

(a) Update any maximum allowable cost price list at least every seven business days, noting any price change from the previous list, and provide a means by which a network pharmacy may promptly review a current price in an electronic, print, or telephonic format within one business day of any such change at no cost to the pharmacy;

(b) Maintain a procedure to eliminate a product from the maximum allowable cost price list in a timely manner to remain consistent with any change in the marketplace; and

(c) Make the maximum allowable cost price list available to each contracted pharmacy in a format that is readily accessible and usable to the contracted pharmacy.

(2) A pharmacy benefit manager shall not place a prescription drug on a maximum allowable cost price list unless the drug is available for purchase by pharmacies in this state from a national or regional drug wholesaler and is not obsolete.

(3) Each contract between a pharmacy benefit manager and a pharmacy shall include a process to appeal, investigate, and resolve disputes regarding any maximum allowable cost price. The process shall include:

(a) A fifteen-business-day limit on the right to appeal following submission of an initial claim by a pharmacy;

(b) A requirement that any appeal be investigated and resolved within seven business days after the appeal is received by the pharmacy benefit manager; and

(c) A requirement that the pharmacy benefit manager provide a reason for any denial of an appeal and identify the national drug code for the drug that may be purchased by the pharmacy at a price at or below the price on the maximum allowable cost price list as determined by the pharmacy benefit manager.

(4) If an appeal is determined to be valid by the pharmacy benefit manager, the pharmacy benefit manager shall:

(a) Make an adjustment in the drug price no later than one day after the appeal is resolved; and

(b) Permit the appealing pharmacy to reverse and rebill the claim in question, using the date of the original claim.

Source: Laws 2022, LB767, § 8.
Operative date January 1, 2023.

44-4609 Pharmacy benefit manager; 340B entity; 340B contract pharmacy; treatment; discrimination, prohibited.

(1) A pharmacy benefit manager that reimburses a 340B entity or a 340B contract pharmacy for a drug that is subject to an agreement under 42 U.S.C. 256b shall not reimburse the 340B entity or the 340B contract pharmacy for the pharmacy-dispensed drug at a rate lower than that paid for the same drug to similarly situated pharmacies that are not 340B entities or 340B contract pharmacies, and shall not assess any fee, chargeback, or other adjustment upon the 340B entity or 340B contract pharmacy on the basis that the 340B entity or 340B contract pharmacy participates in the program set forth in 42 U.S.C. 256b.

(2) A pharmacy benefit manager shall not discriminate against a 340B entity or 340B contract pharmacy in a manner that prevents or interferes with a covered individual's choice to receive such drug from the corresponding 340B entity or 340B contract pharmacy.

(3) For purposes of this section:

(a) 340B contract pharmacy means any pharmacy under contract with a 340B entity to dispense drugs on behalf of such 340B entity; and

(b) 340B entity means an entity participating in the federal 340B drug discount program, as described in 42 U.S.C. 256b.

Source: Laws 2022, LB767, § 9.
Operative date January 1, 2023.

44-4610 Pharmacy benefit manager; specialty pharmacy network; exclusions.

A pharmacy benefit manager shall not exclude a Nebraska pharmacy from participation in the pharmacy benefit manager's specialty pharmacy network if:

(1) The pharmacy holds a specialty pharmacy accreditation from a nationally recognized independent accrediting organization; and

(2) The pharmacy is willing to accept the terms and conditions of the pharmacy benefit manager's agreement with the pharmacy benefit manager's specialty pharmacies.

Source: Laws 2022, LB767, § 10.
Operative date January 1, 2023.

44-4611 Act; enforcement; director; powers and duties; monetary penalty.

(1) The director shall enforce compliance with the requirements of the Pharmacy Benefit Manager Licensure and Regulation Act.

(2)(a) Pursuant to the Insurers Examination Act, the director may examine or audit the books and records of a pharmacy benefit manager providing a claims processing service or other prescription drug or device service for a health benefit plan to determine compliance with the act.

(b) Information or data acquired during an examination under subdivision (2)(a) of this section is:

(i) Considered proprietary and confidential;

(ii) Not subject to sections 84-712, 84-712.01, and 84-712.03 to 84-712.09;

(iii) Not subject to subpoena; and

(iv) Not subject to discovery or admissible as evidence in any private civil action.

(3) The director may use any document or information provided pursuant to subsection (3) or (4) of section 44-4606 in the performance of the director's duties to determine compliance with the Pharmacy Benefit Manager Licensure and Regulation Act.

(4) The director may impose a monetary penalty on a pharmacy benefit manager or the health carrier with which a pharmacy benefit manager is contracted for a violation of the Pharmacy Benefit Manager Licensure and Regulation Act. The director shall establish the monetary penalty for a violation of the act in an amount not to exceed one thousand dollars per entity for each violation.

Source: Laws 2022, LB767, § 11.
Operative date January 1, 2023.

Cross References

Insurers Examination Act, see section 44-5901.

44-4612 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Pharmacy Benefit Manager Licensure and Regulation Act.

Source: Laws 2022, LB767, § 12.
Operative date January 1, 2023.

ARTICLE 51

INVESTMENTS

Section

44-5103 Terms, defined.

For purposes of the Insurers Investment Act:

(1) Admitted assets means the investments authorized under the act and stated at values at which they are permitted to be reported in the insurer's financial statement filed under section 44-322, except that admitted assets does not include assets of separate accounts, the investments of which are not subject to the act;

(2) Agent means a national bank, state bank, trust company, or broker-dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, agent may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities;

(3) Business entity means a sole proprietorship, corporation, limited liability company, association, partnership, limited liability partnership, joint-stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit;

(4) Clearing corporation means a clearing corporation as defined in subdivision (a)(5) of section 8-102, Uniform Commercial Code, that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, clearing corporation may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(5) Custodian means:

(a) A national bank, state bank, Federal Home Loan Bank, or trust company that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by the regulator charged with establishing such standards and assessing the solvency of such institutions and that is regulated by federal or state banking laws or the Federal Home Loan Bank Act or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, custodian may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is

regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

(b) A broker-dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars;

(6) Custodied securities means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(7) Direct when used in connection with the term obligation means that the designated obligor is primarily liable on the instrument representing the obligation;

(8) Director means the Director of Insurance;

(9) Insurer is defined as provided in section 44-103, and unless the context otherwise requires, insurer means domestic insurer;

(10) Mortgage means a consensual interest created by a real estate mortgage, a trust deed on real estate, or a similar instrument;

(11) Obligation means a bond, debenture, note, or other evidence of indebtedness or a participation, certificate, or other evidence of an interest in any of the foregoing;

(12) Policyholders surplus means the amount obtained by subtracting from the admitted assets (a) actual liabilities and (b) any and all reserves which by law must be maintained. In the case of a stock insurer, the policyholders surplus also includes the paid-up and issued capital stock;

(13) Primary credit source means the credit source to which an insurer looks for payment as to an investment and against which an insurer has a claim for full payment;

(14) Securities Valuation Office means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners;

(15) Security certificate has the same meaning as defined in subdivision (a)(16) of section 8-102, Uniform Commercial Code;

(16) State means any state of the United States, the District of Columbia, or any territory organized by Congress;

(17) Tangible net worth means shareholders equity, less intangible assets, as reported in the broker-dealer's most recent Annual or Transition Report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, S.E.C. Form 10-K, filed with the Securities and Exchange Commission; and

(18) Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system mean the book-entry securities systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31 U.S.C. 3101 et seq. The operation of the systems are subject to 31 C.F.R. part 357 et seq.

Source: Laws 1991, LB 237, § 3; Laws 1997, LB 273, § 2; Laws 1999, LB 259, § 11; Laws 2005, LB 119, § 13; Laws 2007, LB117, § 12; Laws 2009, LB192, § 4; Laws 2022, LB863, § 25.
Operative date July 21, 2022.

44-5105 Authorization and approval; investment records; board of directors; duties.

(1) An insurer shall not make any investment, sale, loan, or exchange, except loans on its own policies or contracts, unless authorized, approved, or ratified by a majority of the members of the board of directors or by a committee of its members charged by the board of directors or bylaws with the duty of making such investment, sale, loan, or exchange. The board of directors shall further determine by formal resolution at least annually whether all investments have been made in accordance with the delegations, standards, limitations, and investment objectives prescribed by the board of directors or a committee of the board of directors charged with the responsibility to direct its investments.

(2) The board of directors, after reviewing and assessing the insurer's technical investment and administrative capabilities and expertise, shall adopt a written plan for making investments and for engaging in investment practices. The plan shall specify, unless otherwise authorized by the Director of Insurance, the quality, maturity, and diversification of investments, including investment strategies intended to assure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus. At least annually, the board of directors or a committee of the board of directors shall review and revise, as appropriate, the written plan.

(3) On no less than a quarterly basis, and more often if deemed appropriate, the board of directors or committee of the board of directors shall receive and review a summary report on the insurer's investment portfolio, investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan.

(4) The board of directors shall require that records of authorizations, approvals or other documentation as the board of directors may require, and reports of any action taken under authority delegated under the written plan shall be made available on a regular basis to the board of directors.

(5) The board of directors shall perform its duties in good faith and with that degree of care that ordinarily prudent individuals in like positions would use under similar circumstances.

(6) Each insurer shall maintain a record of its investments in a form and manner as prescribed by the Director of Insurance. Such record shall include an indication by the insurer of the provision of law under which an investment is held.

(7) For purposes of this section, board of directors includes the governing body of an insurer having authority equivalent to that of a board of directors.

Source: Laws 1991, LB 237, § 5; Laws 1997, LB 273, § 4; Laws 2022, LB863, § 26.
Operative date July 21, 2022.

44-5120 Lending of securities.

(1) An insurer may lend its securities if:

(a) The securities are created or existing under the laws of the United States and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by

the full faith and credit of the United States or an agency or instrumentality of the United States, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(b) The securities are created or existing under the laws of Canada or are securities described in section 44-5137 and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the foreign country, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(c) Prior to the loan, the borrower or any indemnifying party furnishes the insurer with or the insurer otherwise obtains the most recent financial statement of the borrower or any indemnifying party;

(d) The insurer receives a reasonable fee related to the market value of the loaned securities and to the term of the loan;

(e) The loan is made pursuant to a written loan agreement; and

(f) The borrower is required to furnish by the close of each business day during the term of the loan a report of the market value of all collateral and the market value of all loaned securities as of the close of trading on the previous business day. If at the close of any business day the market value of the collateral for any loan outstanding to a borrower is less than one hundred percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day an additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities for that loan.

(2) An insurer shall effect securities lending only through the services of a custodian bank or similar entity as approved by the director.

(3) An insurer's investments authorized under this section shall not exceed twenty percent of its admitted assets.

Source: Laws 1991, LB 237, § 20; Laws 1997, LB 273, § 10; Laws 2002, LB 1139, § 28; Laws 2003, LB 216, § 15; Laws 2007, LB117, § 15; Laws 2022, LB863, § 27.
Operative date July 21, 2022.

44-5120.01 Repurchase and reverse repurchase transactions.

(1) For purposes of this section:

(a) Acceptable collateral means:

(i) As to reverse repurchase transactions, cash, cash equivalents, highly rated business entity obligations created or existing under the laws of the United States or Canada, public equity securities that are traded on a United States exchange, and direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or an agency of the government of the United States or the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(ii) As to repurchase transactions, cash and cash equivalents;

(b) Cash equivalents means short-term, highly rated investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. Cash equivalents includes government money market mutual funds and class one money market mutual funds;

(c) Highly rated means an investment with a minimum quality rating as described in subdivision (2) of section 44-5112;

(d) Repurchase transaction means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand;

(e) Reverse repurchase transaction means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand; and

(f) Short-term means investments with a remaining term to maturity of ninety days or less.

(2) An insurer may engage in repurchase and reverse repurchase transactions as set forth in this section. The insurer shall enter into a written agreement for transactions entered under this section. Such agreements shall require that each transaction terminate no more than one year from its inception.

(3) Cash received in a transaction under this section shall be invested in accordance with the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes.

(4) So long as the transaction remains outstanding, the insurer, or its agent or custodian, shall maintain as acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants' trust company, or other securities depositories approved by the director:

(a) Possession of the acceptable collateral;

(b) A perfected security interest in the acceptable collateral; or

(c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(5) The limitations of sections 44-5115 and 44-5137 shall not apply to the business entity counterparty exposure created by transactions under this section. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(a) The aggregate amount of securities then sold to or purchased from any one business entity counterparty under this section would exceed five percent of its admitted assets; and in calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

(b) The aggregate amount of all securities then sold to or purchased from all business entities under this section would exceed twenty percent of its admitted assets, and in no event shall the collateral market value of all public equity securities that are traded on a United States exchange received in a reverse repurchase transaction exceed more than twenty percent of the total market value of collateral received in reverse repurchase transactions.

(6)(a) In a repurchase transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent of the market value of the securities transferred by the insurer in the transaction as of that date. If at the close of any business day the market value of the acceptable collateral is less than ninety-five percent of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver, by the close of the next business day, additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent of the market value of the transferred securities.

(b) In a reverse repurchase transaction, the insurer shall receive acceptable collateral having a market value at least equal to (i) one hundred two percent of the purchase price paid by the insurer for collateral excluding public equity securities that are traded on a United States exchange or (ii) one hundred ten percent of the purchase price paid by the insurer for public equity securities that are traded on a United States exchange. If at the close of any business day the market value of the acceptable collateral is less than one hundred percent of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide, by the close of the next business day, additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals the applicable percentage of such collateral as provided in this subdivision. Securities acquired by an insurer in a reverse repurchase transaction shall not be sold in a repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

Source: Laws 2003, LB 216, § 14; Laws 2022, LB863, § 28.
Operative date July 21, 2022.

44-5132 Bankruptcy-remote business entity securities.

(1) An insurer may invest in a security or other instrument, excluding a mutual fund, evidencing an interest in or the right to receive payments from, or payable from distributions on, an asset, a pool of assets, or specifically divisible cash flows which are legally transferred to a special purpose bankruptcy-remote business entity on the following conditions:

(a) The business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights, and engaging in activities required to service the assets or

rights and any credit enhancement or support features held by the business entity; and

(b) The assets of the business entity consist solely of interest-bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights. However, the existence of credit enhancements, such as letters of credit or guarantees, or other support features, shall not cause a security or other instrument to be an unauthorized investment under this section.

(2) Investments in interest-only securities, other than those with a 1 designation from the Securities Valuation Office, or other instruments shall not be authorized under this section.

(3) Any investment authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 44-5112.

Source: Laws 1991, LB 237, § 32; Laws 1997, LB 273, § 16; Laws 2022, LB863, § 29.
Operative date July 21, 2022.

44-5137 Foreign securities.

(1) An insurer may invest in foreign securities or other investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal or interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in countries other than the United States or Canada, which are substantially of the same kinds and classes as those authorized for investment under the Insurers Investment Act. A security or investment shall not be deemed to be foreign if the issuer or a guarantor against which an insurer has a claim for payment has its principal place of business or is domiciled in the United States or Canada or the primary credit source is located in the United States or Canada and, in each case, the insurer has a contractual right to bring an enforcement action in the United States or Canada.

(2) Subject to the limitations in subsection (3) of this section:

(a) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 1 designation from the Securities Valuation Office shall not exceed ten percent of the insurer's admitted assets;

(b) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 2 or 3 designation from the Securities Valuation Office shall not exceed five percent of the insurer's admitted assets;

(c) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 4, 5, or 6 designation from the Securities Valuation Office shall not exceed three percent of the insurer's admitted assets;

(d) An insurer's investments authorized under subsection (1) of this section denominated in any one foreign currency shall not exceed two percent of the insurer's admitted assets;

(e) An insurer's investments authorized under subsection (1) of this section denominated in foreign currencies, in the aggregate, shall not exceed five percent of the insurer's admitted assets; and

(f) An insurer's investments authorized under subsection (1) of this section shall not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section 44-5149 to exchange all payments made on the foreign currency denominated investments for United States currency at a rate which effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) An insurer's investments authorized under subsection (1) of this section shall not exceed, in the aggregate, twenty-five percent of its admitted assets.

(4) An insurer which is authorized to do business in a foreign country or which has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign country may, in addition to the investments authorized by subsection (1) of this section, invest in securities and investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal and interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in such foreign countries, which are substantially of the same kinds and classes as those authorized for investment under the act.

(5) An insurer's investments authorized under subsection (4) of this section and cash in the currency of such country which is at any time held by such insurer, in the aggregate, shall not exceed the greater of (a) one and one-half times the amount of its reserves and other obligations under such contracts or (b) the amount which such insurer is required by law to invest in such country.

(6) Any investment in debt obligations authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 44-5112, except that an insurer's investment in bonds or notes secured by a mortgage on real estate located outside of the United States or Canada that otherwise complies with section 44-5143 shall not be subject to such minimum quality rating requirements.

(7) An insurer's investments made under this section shall be aggregated with investments of the same kinds and classes made under the Insurers Investment Act except section 44-5153 for purposes of determining compliance with the limitations contained in other sections.

Source: Laws 1991, LB 237, § 37; Laws 1997, LB 273, § 18; Laws 2007, LB117, § 16; Laws 2022, LB863, § 30.
Operative date July 21, 2022.

44-5139 Investment trusts and investment companies.

(1) An insurer may invest in shares of a fund registered under the Investment Company Act of 1940, as amended, as a diversified open-end investment company and in shares, interests, or participation certificates in any management type of investment trust, corporate or otherwise, subject to the following restrictions:

(a) The investment restrictions and policies relating to the investment of the assets of the trust and its activities shall be limited to the same kinds, classes, and investment grades as those authorized for investment under the Insurers Investment Act; and

(b) The assets of such investment trust shall not be less than twenty million dollars at the date of purchase.

An insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(2) An insurer may invest in the shares of a fund registered under the Investment Company Act of 1940, as amended, as a diversified open-end investment company when the investment restrictions and policies relating to the investment of the assets of the fund and its activities are limited solely to (a) obligations, (b) commitments to purchase obligations, or (c) assignments of interest in obligations issued or guaranteed by the United States or its agencies or instrumentalities. An insurer's investments authorized under this subsection shall not exceed twenty-five percent of its admitted assets.

Source: Laws 1991, LB 237, § 39; Laws 2022, LB863, § 31.
Operative date July 21, 2022.

44-5141 Common stock; equity interests.

(1) An insurer may invest in the common stock or rights to purchase or sell common stock of any corporation which has retained earnings of not less than one million dollars, except that an investment may be made in any corporation having a majority of its operations in this state which has retained earnings of not less than two hundred fifty thousand dollars. The earnings of all predecessor, merged, consolidated, or purchased corporations shall be included through the use of consolidated or pro forma statements.

(2)(a) An insurer may invest in equity interests or rights to purchase or sell equity interests in business entities other than general partnerships unless the general partnership is wholly owned by the insurer.

(b) A life insurer shall not invest under this subsection in any investment which the life insurer may invest in under section 44-5140 or 44-5144 or subsection (1) of this section.

(3) A life insurer's investments authorized under this section shall not exceed the greater of one hundred percent of its policyholders surplus or twenty percent of its admitted assets.

Source: Laws 1991, LB 237, § 41; Laws 1997, LB 273, § 20; Laws 2007, LB117, § 18; Laws 2022, LB863, § 32.
Operative date July 21, 2022.

44-5143 Real estate mortgages.

(1) An insurer may invest in bonds or notes secured by a first mortgage on real estate in the United States or Canada if the amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed eighty percent of the appraised value of the real estate and improvements at the time of making the investment, or if the funds are used for a construction loan, the amount does not exceed eighty percent of the market value of the real estate together with the actual costs of improvements constructed thereon at the time of final funding by the insurer. The limitation in this subsection shall not:

(a) Apply to investments authorized under section 44-5132;

(b) Prohibit an insurer from renewing or extending a loan for the original amount when the value of such real estate has depreciated;

(c) Prohibit an insurer from accepting, as part payment for real estate sold by it, a mortgage thereon for more than eighty percent of the purchase price of such real estate; or

(d) Prohibit an insurer from advancing additional loan funds to protect its real estate security.

(2) An insurer may invest in bonds or notes secured by a first mortgage on leasehold estates in real estate located in the United States or Canada if:

(a) Such underlying real estate is unencumbered except by (i) rentals to accrue therefrom to the owner of the real estate or (ii) a fee mortgage, if there is an agreement from the lender secured by the fee mortgage to not terminate or extinguish the leasehold interest as long as the lessee is not in default;

(b) There is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated, or otherwise disturbed so long as the lessee is not in default;

(c) The amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed eighty percent of the appraised value of such leasehold with improvements at the time of making the loan, or, if the funds are used for a construction loan, the amount loaned does not exceed eighty percent of the market value of the leasehold estate together with the actual costs of improvements constructed thereon at the time of final funding by the insurer; and

(d) Such mortgage loan will be completely amortized during the unexpired portion of the lease or leasehold estate, or, if a loan has a balloon payment, the mortgage loan amortization period plus the remaining unexpired term of the lease after the maturity date of the loan is at least thirty years, except that any lease or leasehold estate that is convertible by the borrower, as lessee, or the insurer, as lender, into a fee interest for no or minimal consideration at any time during the lease term shall be treated as a fee interest for all purposes under section 44-5143 so long as the insurer's mortgage is secured by such fee interest following such conversion.

(3) Nothing in this section shall prevent any amount invested under this section that exceeds eighty percent of the appraised value of the real estate or leasehold and improvements, as the case may be, from being authorized under section 44-5153.

(4) All buildings and other real estate improvements which constitute a material part of the value of the mortgaged premises, whether estates in fee or leasehold estates or combination thereof, shall be (a)(i) substantially completed before the investment is made or (ii) of a value that is at all times substantial in value in relation to the amount of construction loan funds advanced by the insurer on account of the loan and (b) kept insured against loss or damage by fire or windstorm in a reasonable amount for the benefit of the mortgagee.

(5) Other than investments subject to section 44-5132, if there are more than four holders of the issue of such bonds or notes described in subsection (1) or (2) of this section, (a) the security of such bonds or notes, as well as all collateral papers including insurance policies executed in connection therewith, shall be made to and held by a trustee, which trustee shall be a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of a bank or trust company incorporated under the laws of this state, in which case a paid-in capital of not less than one hundred thousand dollars shall be required, and (b) it shall be agreed that, in case of proper notification of default, such trustee, upon request of at least twenty-five percent of the holders of the par amount of the bonds outstanding and proper indemnification, shall proceed to protect the rights of such bond-

holders under the provisions of the trust indenture. Nothing in this subsection shall be deemed to inhibit the ability of an insurer to rely on the provisions of section 44-5110 with regard to loan participations for loans that meet the requirements of this section.

(6)(a) An insurer may invest in notes or bonds secured by second mortgages or other second liens, including all inclusive or wraparound mortgages or liens, upon real property encumbered only by a first mortgage or lien which meets the requirements set forth in this section, subject to either of the following conditions:

(i) The insurer also owns the note or bond secured by the prior first mortgage or lien and the aggregate value of both loans does not exceed the loan to market value ratio requirements of this section; or

(ii) The note or bond is secured by an all-inclusive or wraparound lien or mortgage which conforms to the requirements set forth in subdivision (b) of this subsection, if the aggregate value of the resulting loan does not exceed the loan to market value ratio requirements of this section.

(b) For purposes of this subsection, the terms wraparound and all-inclusive lien or mortgage refer to a loan made by an insurer to a borrower on the security of a mortgage or lien on real property other than property containing a residence of one to four units or on which a residence of one to four units is to be constructed, where such real property is encumbered by a first mortgage or lien and which loan is subject to all of the following requirements:

(i) The total amount of the obligation of the borrower to the insurer under the loan is not less than the sum of the amount disbursed by the insurer on account of the loan and the outstanding balance of the obligation secured by the preexisting lien or mortgage;

(ii) The instrument evidencing the lien or mortgage by which the obligation of the borrower to the insurer under the loan is secured, is recorded, and the lien is insured under a policy of title insurance in an amount not less than the total amount of the obligation of the borrower to the insurer under the loan; and

(iii) The insurer either (A) files for record in the office of the recorder of the county in which the real property is located a duly acknowledged request for a copy of any notice of default or of sale under the preexisting lien or (B) is entitled under applicable law to receive notice of default, sale, or foreclosure of the preexisting lien.

(7)(a) An insurer may invest in mezzanine real estate loans subject to the following conditions:

(i) The terms of the mezzanine loan agreement:

(A) Require that each pledgor abstain from granting additional security interests in the equity interest pledged;

(B) Employ techniques to minimize the likelihood or impact of a bankruptcy filing on the part of the real estate owner or the mezzanine real estate loan borrower; and

(C) Require the real estate owner, or mezzanine real estate loan borrower, to: (I) Hold no assets other than, in the case of the real estate owner, the real property, and in the case of the mezzanine borrower, the equity interest in the real estate owner; (II) not engage in any business other than, in the case of the real estate owner, the ownership and operation of the real estate, and in the case of the mezzanine real estate borrower, holding an ownership interest in

the real estate owner; and (III) not incur additional debt, other than limited trade payables, a first mortgage loan, and the mezzanine real estate loan; and

(ii) At the time of the initial investment, the mezzanine real estate loan lender shall corroborate that the sum of the first mortgage and the mezzanine real estate loan does not exceed one hundred percent of the value of the real estate as evidenced by a current appraisal.

(b) The value of an insurer's investments authorized under this subsection shall not exceed three percent of its admitted assets.

(c) For purposes of this subsection, mezzanine real estate loan refers to a loan made by an insurer to a borrower on the security of debt obligation which is secured by a pledge of a direct or indirect equity interest in an entity that owns real estate.

(8) An insurer's investments authorized under this section shall not exceed forty percent of its admitted assets, and an insurer's investments authorized under this section and section 44-5144, in the aggregate, shall not exceed fifty percent of its admitted assets.

Source: Laws 1991, LB 237, § 43; Laws 2004, LB 1047, § 18; Laws 2005, LB 119, § 15; Laws 2022, LB863, § 33.
Operative date July 21, 2022.

44-5144 Real estate.

(1) An insurer may acquire and hold unencumbered real estate or certificates evidencing participation with other investors, either directly or through partnership or limited liability company interests, or other equity interests, including common and preferred equity investments, in unencumbered real estate if:

(a) The real estate is leased under a lease contract;

(b) The net amount of the annual lease payments to the owner of the real estate is sufficient to amortize the cost of the real estate within the duration of the lease, but in no event for a period of longer than forty years, and pay at least three percent per annum on the unamortized balance of the cost of the real estate; and

(c) The amount invested in any such real estate does not exceed its appraised value.

When the lessee under a lease described in this subsection is the United States or any agency or instrumentality thereof, any state or any county, municipality, district, or other governmental subdivision thereof, or any agency, board, authority, or institution established or maintained under the laws of the United States or any state thereof, such lease contract may provide that upon the termination of the term thereof, title to such real estate shall vest in the lessee.

When a lease described in this subsection is under a trust agreement which provides, among other things, that upon proper notification of default under such lease and request to such trustee by an investor or investors representing at least twenty-five percent of the equitable ownership of the real estate and proper indemnification, the trustee shall proceed to protect the rights and interest of the investors owning the equitable title to the real estate. In a governmental lease or leasehold estate under which the insurer owns an interest in a lessee that is convertible by the lessee into a fee interest for no or

de minimis consideration at any time during the lease term, it shall be treated as a fee interest for all purposes under this section.

For purposes of this subsection, unencumbered real estate means real estate in which other interests may exist which if enforced would not result in the forfeiture of the insurer's interest.

(2) An insurer may also acquire and hold real estate:

(a) Mortgaged to it in good faith by way of security for a loan previously contracted or for money due;

(b) Conveyed to it in satisfaction of debts previously contracted in the course of its dealings; and

(c) Purchased at sale upon judgments, decrees, or mortgages obtained or made for such debts.

(3) An insurer may invest in real estate required for its home offices or to be otherwise occupied by the insurer or its employees in the transaction of its business and may rent the balance of the space therein. The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(4)(a) An insurer with policyholders surplus of at least one million dollars may individually or in conjunction with other investors acquire, own, hold, develop, and improve real estate that is essentially residential or commercial in character, even though subject to an existing mortgage or thereafter mortgaged by the insurer, if such real estate is located in the United States or Canada.

(b) For purposes of this subsection, real estate shall include a leasehold having an unexpired term of at least twenty years, including the term provided by any enforceable option of renewal. The income from such leasehold shall be applied so as to amortize the cost of leasehold and improvements within the lesser of eighty percent of such unexpired term or forty years from acquisition.

(c) An insurer may hold real estate or certification evidencing participation authorized under this subsection with other investors either directly or through a partnership, limited liability company, or other equity interest, including without limitation, common and preferred equity investments.

(d) The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(5) An insurer may also acquire such other real estate as may be acquired ancillary to a corporate merger, acquisition, or reorganization of the insurer.

(6) The value of an insurer's investments authorized under subsections (3), (4), and (5) of this section, in the aggregate, shall not exceed fifteen percent of its admitted assets.

(7) For purposes of this section, value shall mean original cost plus any development and improvement costs whenever expended less the unpaid balance of any mortgage and annual depreciation on improvements of not less than two percent.

(8) An insurer's investments authorized under this section and section 44-5143, in the aggregate, shall not exceed fifty percent of its admitted assets.

Source: Laws 1991, LB 237, § 44; Laws 1993, LB 121, § 260; Laws 1997, LB 273, § 21; Laws 2005, LB 119, § 16; Laws 2022, LB863, § 34.
Operative date July 21, 2022.

44-5149 Hedging transactions; derivative instruments.

(1) An insurer may use derivative instruments in hedging transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in hedging transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders surplus;

(b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders surplus; and

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders surplus.

(2)(a) An insurer may use derivative instruments in income-generation transactions by selling:

(i) Covered call options on non-callable fixed income securities or callable fixed income securities if the option expires by its terms prior to the end of the non-callable period;

(ii) Covered call options on equity securities if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(iii) Covered puts on investments that the insurer is permitted to acquire under the Insurers Investment Act if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under that put during the complete term of the put option sold; and

(iv) Covered caps or floors if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under such caps or floors during the complete term that the cap or floor is outstanding.

(b) An insurer may enter into income-generation transactions under this subsection if the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying any derivative instrument subject to call, does not exceed the lesser of ten percent of the insurer's admitted assets or one hundred percent of the insurer's policyholders surplus.

(3) An insurer may use derivative instruments in replication transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in replication transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders surplus;

(b) The aggregate statement value of options, caps, and floors written in replication transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders surplus;

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in replication transactions does not exceed the lesser of six and one-half

percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders surplus;

(d) The replication transactions are limited to the replication of investments or instruments otherwise permitted under the Insurers Investment Act; and

(e) The insurer engages in hedging transactions or income generation transactions pursuant to this section and has sufficient experience with derivatives generally such that its performance and procedures reflect that the insurer has been successful in adequately identifying, measuring, monitoring, and limiting exposures associated with such transactions and that the insurer has superior corporate controls over such activities as well as a sufficient number of dedicated staff who are knowledgeable and skilled with these sophisticated financial instruments.

(4) An insurer may purchase or sell one or more derivative instruments to offset, in whole or in part, any derivative instrument previously purchased or sold, as the case may be, without regard to the quantitative limitations of this section, provided that the derivative instrument is an exact offset to the original derivative instrument being offset.

(5) An insurer shall demonstrate to the director upon request the intended hedging, income-generation, or replication characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analysis.

(6) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations in section 44-5115.

(7) The director may approve additional transactions involving the use of derivative instruments pursuant to rules and regulations adopted and promulgated by the director.

(8) For the investment limitations covered in subsections (1), (2), and (3) of this section, aggregate statement value and aggregate potential exposure shall be calculated net of collateral posted or received.

(9) For purposes of this section:

(a) Derivative instrument means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

Derivative instrument includes all investment instruments or contracts that derive all or almost all of their value from the performance of an underlying market, index, or financial instrument, including, but not limited to, options, warrants, caps, floors, collars, swaps, credit default swaps, swaptions, forwards, and futures. Derivative instrument does not include investments authorized under any other section of the Insurers Investment Act;

(b) Hedging transaction means a derivative transaction which is entered into and maintained to reduce:

(i) The risk of a change in value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(ii) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring;

(c) Income-generation transaction means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return; and

(d) Replication transaction means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's portfolio in order to replicate the investment characteristic of another authorized transaction, investment, or instrument or that may operate as a substitute for cash market investments. A derivative transaction entered into by the insurer as a hedging or income-generation transaction authorized pursuant to this section shall not be considered a replication transaction.

Source: Laws 1991, LB 237, § 49; Laws 1997, LB 273, § 22; Laws 2005, LB 119, § 17; Laws 2022, LB863, § 35.
Operative date July 21, 2022.

44-5153 Additional authorized investments.

(1)(a)(i) A life insurer may make investments not otherwise authorized under the Insurers Investment Act in an amount, in the aggregate, not exceeding the lesser of five percent of the first five hundred million dollars of its admitted assets plus ten percent of its admitted assets exceeding five hundred million dollars or one hundred percent of its policyholders surplus.

(ii) An insurer other than a life insurer may make investments not otherwise authorized under the act in an amount, in the aggregate, not exceeding the lesser of twenty-five percent of the amount by which its admitted assets exceed its total liabilities, excluding capital, or five percent of the first five hundred million dollars of its admitted assets plus ten percent of its admitted assets exceeding five hundred million dollars.

(b) Investments authorized under this subsection shall not include obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2)(a) In addition to the provisions of subdivision (1)(a)(i) of this section, a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of ten percent of its admitted assets.

(b) In addition to the provisions of subdivisions (1)(a)(ii) and (b) of this section, an insurer other than a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of fifty percent of its annual net written premiums as shown by the most recent annual financial statement filed by the insurer pursuant to section 44-322.

(3) Investments authorized under subsection (1) or (2) of this section shall not include assets held by a ceding insurer as security supporting reinsurance arrangements through which credit for reinsurance has been allowed.

(4) Investments authorized under subsection (1) or (2) of this section shall not include insurance agents' balances or amounts advanced to or owing by insurance agents.

(5) The limitations set forth in this section shall be applied at the time the investment in question is made and at the end of each calendar quarter. An insurer's investment, which at the time of its acquisition was authorized only under the provisions of this section but which has subsequently and while held by such insurer become of such character as to be authorized elsewhere under the act, shall not be included in determining the amount of such insurer's investments, in the aggregate, authorized under this section, and investments otherwise authorized under the act at the time of their acquisition shall not be included in making such determination.

(6) Derivative instruments described in subsections (1), (2), and (3) of section 44-5149 shall not be authorized investments under this section.

Source: Laws 1991, LB 237, § 53; Laws 1997, LB 273, § 25; Laws 2005, LB 119, § 18; Laws 2007, LB117, § 20; Laws 2022, LB863, § 36. Operative date July 21, 2022.

ARTICLE 90

RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT

44-9004 Terms, defined.

For purposes of the Risk Management and Own Risk and Solvency Assessment Act:

(1) Director means the Director of Insurance;

(2) Insurance group means those insurers and affiliates included within an insurance holding company system as defined in section 44-2121;

(3) Insurer has the same meaning as in section 44-103, except that it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(4) Own risk and solvency assessment means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by the insurer or insurance group, of the material and relevant risks associated with the insurer's or insurance group's current business plan and the sufficiency of capital resources to support those risks;

(5) Own risk and solvency assessment guidance manual means the own risk and solvency assessment guidance manual prescribed by the director which conforms substantially to the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners. A change in the own risk and solvency assessment guidance manual shall be effective on the January 1 following the calendar year in which the change has been adopted by the director; and

(6) Own risk and solvency assessment summary report means a confidential, high-level summary of an insurer's or insurance group's own risk and solvency assessment.

Source: Laws 2014, LB700, § 4; Laws 2016, LB772, § 16; Laws 2022, LB863, § 37.
Operative date July 21, 2022.

ARTICLE 93

TRAVEL INSURANCE ACT

Section
44-9301. Act, how cited.
44-9302. Act; purpose; applicability of provisions.
44-9303. Terms, defined.
44-9304. License or registration required; limited lines travel insurance producer license; issuance; travel retailer; permitted activities; conditions; director; powers.
44-9305. Premium tax; documentation; reporting.
44-9306. Travel protection plans; conditions.
44-9307. Unfair Insurance Trade Practices Act; applicability; unfair trade practices.
44-9308. Travel administrator; requirements; responsibilities.
44-9309. Travel insurance; classified as inland marine line of insurance; form; standards.
44-9310. Rules and regulations.

44-9301 Act, how cited.

Sections 44-9301 to 44-9310 shall be known and may be cited as the Travel Insurance Act.

Source: Laws 2022, LB863, § 1.
Operative date January 1, 2023.

44-9302 Act; purpose; applicability of provisions.

(1) The purpose of the Travel Insurance Act is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state.

(2) The requirements of the Travel Insurance Act shall apply to travel insurance that covers any resident of this state or that is sold, solicited, negotiated, or offered in this state and to policies and certificates of travel insurance that are delivered or issued for delivery in this state. The act shall not apply to cancellation fee waivers or travel assistance services except as expressly provided in the act.

(3) All other applicable provisions of the insurance laws of this state shall continue to apply to travel insurance, except that the specific provisions of the Travel Insurance Act shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Source: Laws 2022, LB863, § 2.
Operative date January 1, 2023.

44-9303 Terms, defined.

For purposes of the Travel Insurance Act, unless the context otherwise requires:

(1) Aggregator site means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping;

(2) Blanket travel insurance means a policy of travel insurance issued to any eligible group providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group;

(3) Cancellation fee waiver means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance;

(4) Department means the Department of Insurance;

(5) Director means the Director of Insurance;

(6) Eligible group means two or more persons who are engaged in a common enterprise or have an economic, educational, or social affinity or relationship, including, but not limited to:

(a)(i) Any entity engaged in the business of providing travel services, including, but not limited to, a tour operator, a lodging provider, a vacation property owner, a hotel, a resort, a travel club, a travel agency, a property manager, a cultural exchange program, and a common carrier, or (ii) the operator, owner, or lessor of a means of transportation of passengers, including, but not limited to, any airline, cruise line, railroad, steamship company, or public bus company, so long as, within the particular mode of travel, all members or customers of the group have a common exposure to risk attendant to such travel;

(b) Any college, school, or other institution of learning covering students, teachers, employees, or volunteers;

(c) Any employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests;

(d) Any sports team or camp, or any sponsor of a sports team or camp, covering participants, members, campers, employees, officials, supervisors, or volunteers;

(e) Any religious, charitable, recreational, educational, or civic organization, or any branch thereof, covering any group of members, participants, or volunteers;

(f) Any financial institution or financial institution vendor, or parent holding company, trustee, or agent of or designated by one or more financial institutions or financial institution vendors, including account holders, credit card holders, debtors, guarantors, or purchasers;

(g) Any incorporated or unincorporated association, including a labor union, having a common interest, constitution, and bylaws and organized and maintained in good faith for purposes other than obtaining insurance for members or participants of such association covering its members;

(h) Any trust or the trustees of a fund established, created, or maintained for the benefit of covering members, employees, or customers, subject to the approval of the use of such trust by the director and the requirements of the premium tax provisions in section 44-9305, in one or more associations described in subdivision (6)(g) of this section;

(i) Any entertainment production company covering any group of participants, audience members, contestants, employees, or volunteers;

(j) Any volunteer fire department or ambulance, rescue, first-aid, police, court, civil defense, or other similar volunteer group;

(k) Any preschool, daycare institution for children or adults, or senior citizen club;

(l) Any automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company is the policyholder under a policy to which this subdivision applies; or

(m) Any other group if the director has determined that the members are engaged in a common enterprise or have an economic, educational, or social affinity or relationship and that issuance of the policy would not be contrary to the public interest;

(7) Fulfillment materials means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details;

(8) Group travel insurance means travel insurance issued to any eligible group;

(9) Limited lines travel insurance producer means a:

(a) Licensed managing general agent or third-party administrator;

(b) Licensed insurance producer, including a limited lines insurance producer; or

(c) Travel administrator;

(10) Offer and disseminate means providing general information, including a description of the coverage and price, as well as processing the application and collecting premiums;

(11) Primary certificate holder means an individual person who elects and purchases travel insurance under a group travel insurance policy;

(12) Primary policyholder means an individual person who elects and purchases individual travel insurance;

(13) Travel administrator means a person who directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on, residents of this state in connection with travel insurance. A person shall not be considered a travel administrator if such person's only actions that would otherwise cause such person to be considered a travel administrator include:

(a) A person working for a travel administrator and such person's activities are subject to the supervision and control of the travel administrator;

(b) An insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer's license;

(c) A registered travel retailer offering and disseminating travel insurance under the license of a limited lines travel insurance producer in accordance with the Travel Insurance Act;

(d) A person adjusting or settling claims in the normal course of that person's practice or employment as an attorney and such person does not collect charges or premiums in connection with insurance coverage; or

(e) A business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer;

(14) Travel assistance services means noninsurance services for which the consumer is not indemnified based on a fortuitous event and if providing the service does not result in transfer or shifting of risk that would constitute the business of insurance. Travel assistance services are not insurance and not related to insurance. Travel assistance services includes, but is not limited to:

(a) Security advisories, destination information, and vaccination and immunization information services;

(b) Travel reservation services;

(c) Entertainment, activity, and event planning;

(d) Translation assistance services;

(e) Emergency messaging services;

(f) International legal and medical referral services;

(g) Medical case monitoring services;

(h) Transportation arrangement and coordination services;

(i) Emergency cash transfer assistance services;

(j) Medical prescription replacement assistance services;

(k) Passport and travel document replacement assistance services;

(l) Lost luggage assistance services;

(m) Concierge services; and

(n) Any other service that is furnished in connection with planned travel;

(15)(a) Travel insurance means insurance coverage for personal risks incident to planned travel, including: Interruption or cancellation of a trip or event; loss of baggage or personal effects; damages to accommodations or rental vehicles; sickness, accident, disability, or death occurring during travel; emergency evacuation; repatriation of remains; or any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the director.

(b) Travel insurance does not include a major medical plan that provides comprehensive medical protection for travelers with trips lasting longer than six months, including those working or residing overseas as an expatriate, or any other product that requires a specific insurance producer license;

(16) Travel protection plan means a plan that provides travel insurance, travel assistance services, cancellation fee waivers, or any combination thereof; and

(17) Travel retailer means a business entity that makes, arranges, or offers planned travel and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

Source: Laws 2022, LB863, § 3.
Operative date January 1, 2023.

44-9304 License or registration required; limited lines travel insurance producer license; issuance; travel retailer; permitted activities; conditions; director; powers.

(1) No person may act as a limited lines travel insurance producer or travel retailer unless such person holds the appropriate license or registration as required by the Travel Insurance Act.

(2) The department may issue a limited lines travel insurance producer license to an individual or business entity that files with the department an application for a limited lines travel insurance producer license in a form and manner prescribed by the department. A limited lines travel insurance producer may sell, solicit, or negotiate travel insurance through a licensed insurer.

(3) A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer only if the following conditions are met:

(a) The limited lines travel insurance producer or travel retailer provides to the purchaser of travel insurance:

(i) A description of the material terms or the actual material terms of the travel insurance policy;

(ii) A description of the process for filing a claim;

(iii) A description of the review or cancellation process for the travel insurance policy; and

(iv) The identity and contact information of the insurer and limited lines travel insurance producer;

(b)(i) The limited lines travel insurance producer, at the time of licensure, establishes and maintains a register on a form prescribed by the department of each travel retailer that offers travel insurance on behalf of such limited lines travel insurance producer. The register shall include the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operation and the travel retailer's federal tax identification number. The limited lines travel insurance producer shall submit such register to the department upon request; and

(ii) The limited lines travel insurance producer certifies that the registered travel retailer complies with 18 U.S.C. 1033. The grounds for suspension or revocation and the penalties applicable to resident insurance producers under the Insurance Producers Licensing Act shall be applicable to limited lines travel insurance producers and travel retailers;

(c) The limited lines travel insurance producer designates one of its employees who is a licensed individual producer as the designated responsible producer responsible for the compliance with travel insurance laws and rules and regulations applicable to such limited lines travel insurance producers and travel retailers;

(d) The designated responsible producer, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations complies with the fingerprinting requirements applicable to insurance producers in the state where the limited lines travel insurance producer resides;

(e) The limited lines travel insurance producer has paid all applicable licensing fees as set forth in section 44-4064 and any other applicable state law; and

(f) The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which may be subject to review by the director. The training material shall include, at a minimum, instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(4) A limited lines travel insurance producer and travel retailers registered under its license are exempt from the examination requirements in section 44-4052 and the continuing education requirements in sections 44-3901 to 44-3908.

(5) The director may take disciplinary action against a limited lines travel insurance producer pursuant to section 44-4059.

(6) Any travel retailer offering and disseminating travel insurance shall make brochures or other written materials available to a prospective purchaser that:

(a) Provide the identity and contact information of the insurer and the limited lines travel insurance producer;

(b) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(c) Explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the travel insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

(7) A travel retailer's employee or authorized representative who is not licensed as an insurance producer shall not:

(a) Evaluate or interpret the technical terms, benefits, or conditions of the offered travel insurance coverage;

(b) Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(c) Hold such travel retailer employee or authorized representative out as a licensed insurer, licensed producer, or insurance expert.

(8) A travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions stated in this section is authorized to receive related compensation for the services upon registration by the limited lines travel insurance producer.

(9) The limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure that the travel retailer complies with the Travel Insurance Act.

(10) Any person licensed in a major line of authority as an insurance producer is authorized to sell, solicit, and negotiate travel insurance. A property and casualty insurance producer is not required to become appointed by an insurer in order to sell, solicit, or negotiate travel insurance.

Source: Laws 2022, LB863, § 4.
Operative date January 1, 2023.

Cross References

Insurance Producers Licensing Act, see section 44-4047.

44-9305 Premium tax; documentation; reporting.

(1) A travel insurer shall pay premium tax, as provided in Chapter 77, article 9, on travel insurance premiums paid by:

(a) An individual primary policyholder who is a resident of this state;

(b) A primary certificate holder who is a resident of this state and elects coverage under a group travel insurance policy; or

(c) A blanket travel insurance policyholder that is a resident in or has its principal place of business or the principal place of business of an affiliate or subsidiary that has purchased blanket travel insurance in this state for eligible blanket group members, subject to any apportionment rules which apply to the insurer across multiple taxing jurisdictions or that permit the insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(2) A travel insurer shall:

(a) Document the state of residence or principal place of business of the policyholder or certificate holder; and

(b) Report as premium only the amount allocable to travel insurance only and not any amounts received for travel assistance services or cancellation fee waivers.

Source: Laws 2022, LB863, § 5.
Operative date January 1, 2023.

44-9306 Travel protection plans; conditions.

Travel protection plans may be offered for one price for the combined features that the travel protection plan offers in this state if:

(1) Such plans clearly disclose to the consumer, at or prior to the time of purchase, that the plans include travel insurance, travel assistance services, and cancellation fee waivers as applicable, and the person provides information and an opportunity, at or prior to the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each; and

(2) The fulfillment materials:

(a) Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plans; and

(b) Include the travel insurance disclosures and contact information for persons providing the travel assistance services and cancellation fee waivers, as applicable.

Source: Laws 2022, LB863, § 6.
Operative date January 1, 2023.

44-9307 Unfair Insurance Trade Practices Act; applicability; unfair trade practices.

(1) All persons offering travel insurance to residents of this state are subject to the Unfair Insurance Trade Practices Act except as otherwise provided in this section. In the event of a conflict between the Travel Insurance Act and other provisions of the insurance laws of this state regarding the sale and marketing

of travel insurance and travel protection plans, the provisions of the Travel Insurance Act shall control.

(2) Offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy is an unfair trade practice.

(3)(a) All documents provided to consumers prior to the purchase of travel insurance, including, but not limited to, sales materials, advertising materials, and marketing materials, shall be consistent with the terms of the travel policy, including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(b) For travel insurance policies or certificates that contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions shall be provided to consumers any time prior to the time of purchase of such travel insurance and in the fulfillment materials provided.

(c)(i) Fulfillment materials and the information described in subdivision (3)(a) of section 44-9304 shall be provided to a policyholder or certificate holder as soon as practicable following the purchase of a travel protection plan. Unless the insured has either started a covered trip or filed a claim under the travel insurance policy, a policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

(A) Fifteen days following the date of delivery of the travel protection plan fulfillment materials by postal mail; or

(B) Ten days following the date of delivery of the travel protection plan fulfillment materials by means other than postal mail.

(ii) For purposes of this subdivision, delivery means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.

(d) The travel insurance policy documentation and fulfillment materials shall disclose whether the travel insurance is primary or secondary to other applicable coverage.

(e) If travel insurance is marketed directly to a consumer through an insurer's website or through an aggregator site, it shall not be an unfair trade practice or other violation of law where an accurate summary or short description of the coverage is provided on the web page, so long as the consumer has access to the full provisions of the policy through electronic means.

(4) No person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may do so by using a negative option or opt out, which requires a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form, when the consumer purchases a trip.

(5) It shall be an unfair trade practice to market blanket travel insurance coverage as free.

(6) When a consumer's destination jurisdiction requires insurance coverage, it shall not be an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:

(a) Purchasing the insurance coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package; or

(b) Agreeing to obtain and provide proof of insurance coverage that meets the destination jurisdiction's requirements prior to departure.

Source: Laws 2022, LB863, § 7.
Operative date January 1, 2023.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-9308 Travel administrator; requirements; responsibilities.

(1) No person shall act as or represent that such person is a travel administrator for travel insurance in this state unless such person:

(a) Is a licensed property and casualty insurance producer in this state for activities permitted under such producer license;

(b) Holds a valid managing general agent license in this state; or

(c) Holds a valid third-party administrator license in this state.

(2) A travel administrator and such travel administrator's employees are exempt from the licensing requirements of adjusters for travel insurance such administrator and its employees administer.

(3) An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer and is responsible for ensuring that the travel administrator maintains all books and records relevant to the insurer to be made available by the travel administrator to the department upon request.

Source: Laws 2022, LB863, § 8.
Operative date January 1, 2023.

44-9309 Travel insurance; classified as inland marine line of insurance; form; standards.

(1) Travel insurance shall be classified and filed for purposes of rates and forms under an inland marine line of insurance, however, travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively, or in conjunction with related coverages of emergency evacuation, repatriation of remains, or incidental limited property and casualty benefits such as baggage or trip cancellation, may be filed under either an accident and health line of insurance or an inland marine line of insurance.

(2) Travel insurance may be in the form of an individual, group, or blanket policy.

(3) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, so long as those standards also meet this state's underwriting standards for inland marine lines of insurance.

Source: Laws 2022, LB863, § 9.
Operative date January 1, 2023.

44-9310 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Travel Insurance Act.

Source: Laws 2022, LB863, § 10.
Operative date January 1, 2023.

CHAPTER 45
INTEREST, LOANS, AND DEBT

Article.
7. Residential Mortgage Licensing. 45-736.

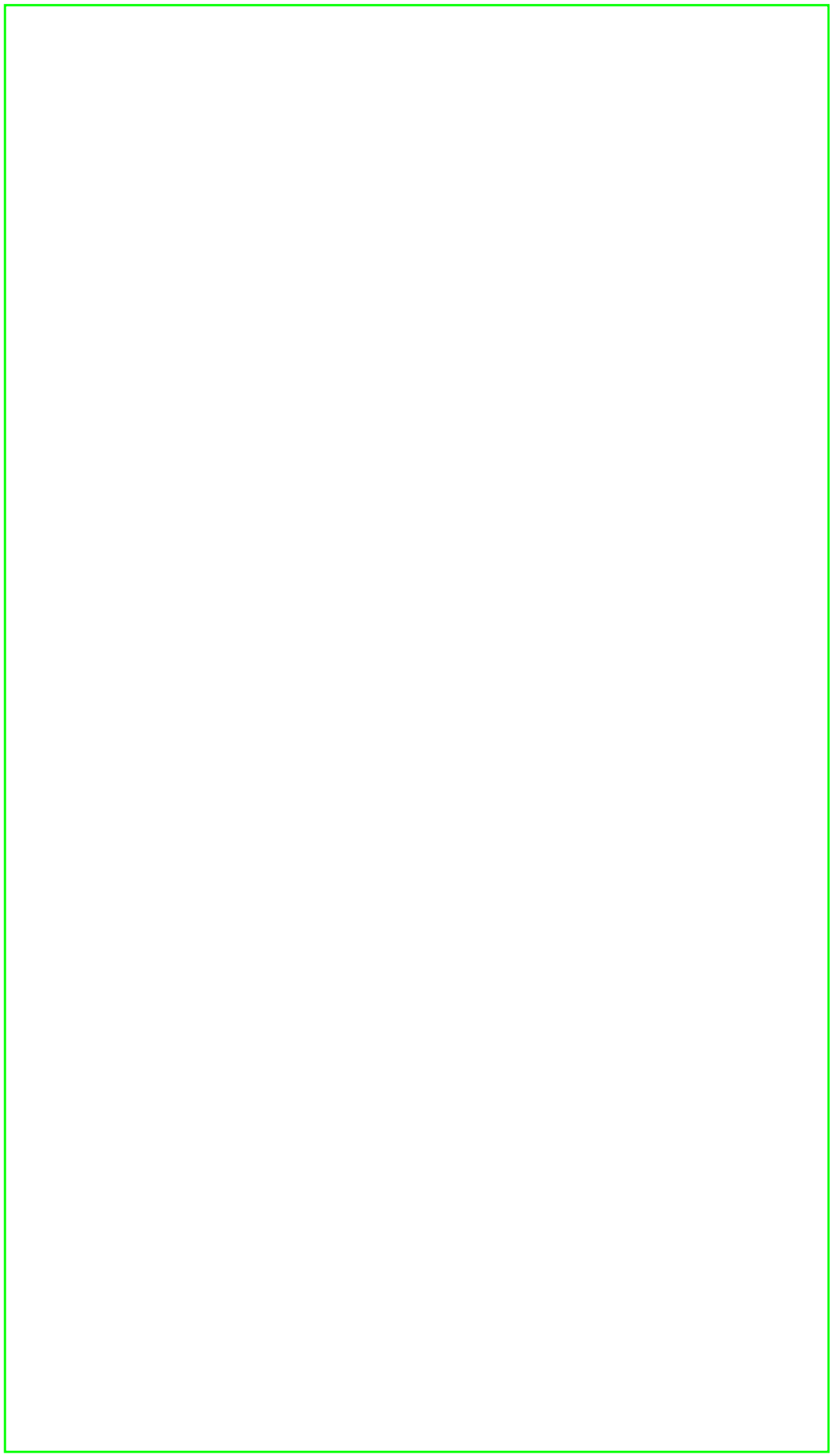
ARTICLE 7
RESIDENTIAL MORTGAGE LICENSING

Section
45-736. Unique identifier; use.

45-736 Unique identifier; use.

The unique identifier of any licensee shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule, regulation, or order of the director.

Source: Laws 2009, LB328, § 21; Laws 2012, LB965, § 18; Laws 2022, LB707, § 34.
Operative date July 21, 2022.



CHAPTER 46
IRRIGATION AND REGULATION OF WATER

Article.
1. Irrigation Districts.
(v) Surface Water Irrigation Infrastructure. 46-1,164, 46-1,165.

ARTICLE 1
IRRIGATION DISTRICTS

(v) SURFACE WATER IRRIGATION INFRASTRUCTURE

Section
46-1,164. Surface Water Irrigation Infrastructure Fund; created; use; investment.
46-1,165. Surface water irrigation infrastructure; grants; matching funds.

(v) SURFACE WATER IRRIGATION INFRASTRUCTURE

46-1,164 Surface Water Irrigation Infrastructure Fund; created; use; investment.

There is hereby created the Surface Water Irrigation Infrastructure Fund to be administered by the Department of Natural Resources. The fund shall be used to provide grants in accordance with section 46-1,165 to irrigation districts. There shall be a one-time transfer of fifty million dollars from the Cash Reserve Fund to the Surface Water Irrigation Infrastructure Fund to carry out the purposes of section 46-1,165. Any money in the Surface Water Irrigation Infrastructure Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2022, LB1012, § 9.
Effective date April 5, 2022.

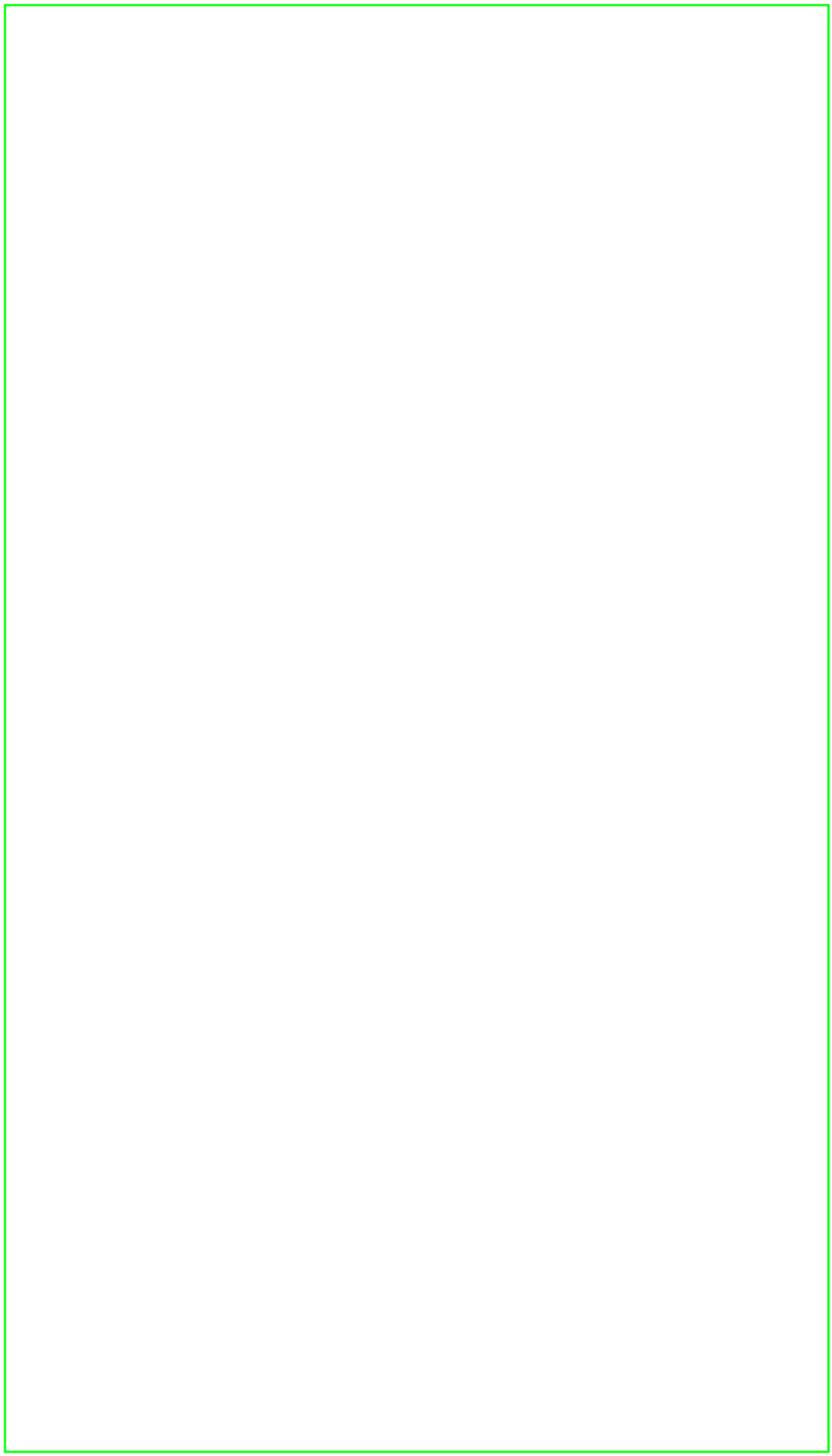
Cross References

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

46-1,165 Surface water irrigation infrastructure; grants; matching funds.

The Department of Natural Resources shall establish procedures and criteria for awarding grants to irrigation districts from the Surface Water Irrigation Infrastructure Fund to be used for repair or construction of any headgate, flume, diversion structure, check valve, or any other physical structure used for irrigation projects. The department may award grants, not to exceed five million dollars per applicant, to an irrigation district that applies to the department based on criteria and procedures established by the department. In order to receive a grant under this section, a grant applicant shall provide matching funds equal to ten percent of the grant amount awarded for such project.

Source: Laws 2022, LB1012, § 10.
Effective date April 5, 2022.



CHAPTER 47
JAILS AND CORRECTIONAL FACILITIES

Article.
7. Medical Services. 47-706.
10. Health of Incarcerated Women.
(b) Feminine Hygiene Products. 47-1008.

ARTICLE 7
MEDICAL SERVICES

Section
47-706. Medical assistance; federal financial participation; legislative intent; Department of Health and Human Services; Department of Correctional Services; duties.

47-706 Medical assistance; federal financial participation; legislative intent; Department of Health and Human Services; Department of Correctional Services; duties.

(1) It is the intent of the Legislature to ensure that human services agencies, correctional facilities, and detention facilities recognize that:

(a) Federal law generally does not authorize federal financial participation for medicaid when a person is an inmate of a public institution as defined in federal law but that federal financial participation is available after an inmate is released from incarceration; and

(b) The fact that an applicant is currently an inmate does not, in and of itself, preclude the Department of Health and Human Services from processing an application submitted to it by, or on behalf of, the inmate.

(2)(a) Medical assistance under the medical assistance program shall be suspended, rather than canceled or terminated, for a person who is an inmate of a public institution if:

(i) The Department of Health and Human Services is notified of the person's entry into the public institution;

(ii) On the date of entry, the person was enrolled in the medical assistance program; and

(iii) The person is eligible for the medical assistance program except for institutional status.

(b) A suspension under subdivision (2)(a) of this section shall end on the date the person is no longer an inmate of a public institution.

(c) Upon release from incarceration, such person shall continue to be eligible for receipt of medical assistance until such time as the person is otherwise determined to no longer be eligible for the medical assistance program.

(3)(a) The Department of Correctional Services shall notify the Department of Health and Human Services:

(i) Within twenty days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution; and

(ii) Within forty-five days prior to the release of a person who qualified for suspension under subdivision (2)(a) of this section.

(b) Local correctional facilities, juvenile detention facilities, and other temporary detention centers shall notify the Department of Health and Human Services within ten days after receiving information that a person receiving medical assistance under the medical assistance program is or will be an inmate of a public institution.

(4)(a) This subsection applies beginning July 1, 2023.

(b) For purposes of this section:

(i) Covered facility means:

(A) A facility as defined in section 83-170; and

(B) A county jail or adult correctional facility that is operated by a county, which county has a population of more than one hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census; and

(ii) Inmate means a person who is an inmate of a covered facility for at least twenty-one consecutive days.

(c) For individuals who are inmates of a covered facility and have at least sixty days' prior notice of their anticipated release date:

(i) The Department of Health and Human Services shall provide onsite, telephonic, or live video medical assistance program enrollment assistance to each inmate at least sixty days before the inmate's release from a covered facility. The department shall submit each inmate's medical assistance program application at least forty-five days prior to the inmate's release from a covered facility unless the inmate elects not to apply for the medical assistance program in writing or the inmate is currently enrolled in the medical assistance program with suspended coverage under subsection (2) of this section; and

(ii) The Department of Health and Human Services shall process each inmate's medical assistance program application prior to the inmate's release from a covered facility such that medical assistance program coverage becomes effective for an eligible individual no later than the day of release from a covered facility.

(d) For individuals who are inmates of a covered facility and have less than sixty days' prior notice of their anticipated release date:

(i) The Department of Health and Human Services shall provide onsite, telephonic, or live video medical assistance program enrollment assistance to each inmate as soon as practicable prior to the inmate's release from a covered facility. The department shall submit each inmate's medical assistance program application as soon as practicable prior to the inmate's release from a covered facility unless the inmate elects not to apply for the medical assistance program in writing or the inmate is currently enrolled in the medical assistance program with suspended coverage under subsection (2) of this section; and

(ii) The Department of Health and Human Services shall process each inmate's medical assistance program application prior to the inmate's release from a covered facility such that medical assistance program coverage becomes

effective for an eligible individual no later than the day of release from a covered facility or as soon as practicable thereafter.

(e) The Department of Health and Human Services may contract with certified third-party enrollment assistance providers to provide the enrollment assistance and application submission required by this subsection.

(f) The Department of Health and Human Services shall take all necessary actions to maximize federal financial participation pursuant to this subsection.

(5) Nothing in this section shall create a state-funded benefit or program.

(6) For purposes of this section, medical assistance program means the medical assistance program under the Medical Assistance Act and the State Children's Health Insurance Program.

(7) This section shall be implemented only if, and to the extent, allowed by federal law. This section shall be implemented only to the extent that any necessary federal approval of state plan amendments or other federal approvals are obtained. The Department of Health and Human Services shall seek such approval if required.

(8) Local correctional facilities, the Nebraska Commission on Law Enforcement and Criminal Justice, and the Office of Probation Administration shall cooperate with the Department of Health and Human Services and the Department of Correctional Services for purposes of facilitating information sharing to achieve the purposes of this section.

(9)(a) The Department of Correctional Services shall adopt and promulgate rules and regulations, in consultation with the Department of Health and Human Services and local correctional facilities, to carry out this section.

(b) The Department of Health and Human Services shall adopt and promulgate rules and regulations, in consultation with the Department of Correctional Services and local correctional facilities, to carry out this section.

Source: Laws 2015, LB605, § 108; Laws 2022, LB921, § 2.
Effective date July 21, 2022.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 10
HEALTH OF INCARCERATED WOMEN

(b) FEMININE HYGIENE PRODUCTS

Section
47-1008. Detention facility; supply feminine hygiene product.

(b) FEMININE HYGIENE PRODUCTS

47-1008 Detention facility; supply feminine hygiene product.

(1) For purposes of this section:

(a) Detention facility means any:

(i) Facility operated by the Department of Correctional Services;

(ii) City or county jail;

(iii) Juvenile detention facility or staff secure juvenile facility as such terms are defined in section 83-4,125; or

(iv) Any other entity or institution operated by the state, a political subdivision, or a combination of political subdivisions for the careful keeping or rehabilitative needs of prisoners or detainees; and

(b) Prisoner means any adult or juvenile incarcerated or detained in any detention facility and includes, but is not limited to, any adult or juvenile who is accused of, convicted of, sentenced for, or adjudicated for violations of criminal law or the terms and conditions of parole, probation, pretrial release, post-release supervision, or a diversionary program.

(2) If any female prisoner in a detention facility needs a feminine hygiene product, the detention facility shall supply such product to the prisoner free of charge.

Source: Laws 2022, LB984, § 11.
Operative date October 1, 2022.

CHAPTER 48
LABOR

Article.
1. Workers' Compensation.
   Part I—Compensation by Action at Law, Modification of Remedies. 48-101.01.
2. General Provisions. 48-239.
3. Child Labor. 48-302, 48-303.
6. Employment Security. 48-625 to 48-675.
36. Nebraska Fair Pay to Play Act. 48-3601 to 48-3609.
37. Nebraska Statewide Workforce and Education Reporting System Act. 48-3704.

ARTICLE 1
WORKERS' COMPENSATION

PART I. COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

Section
48-101.01. Mental injuries and mental illness; first responder; frontline state employee; county correctional officer; legislative findings; evidentiary burden; compensation; when; first responder; annual resilience training; reimbursement; department; duties.

PART I

COMPENSATION BY ACTION AT LAW, MODIFICATION OF REMEDIES

48-101.01 Mental injuries and mental illness; first responder; frontline state employee; county correctional officer; legislative findings; evidentiary burden; compensation; when; first responder; annual resilience training; reimbursement; department; duties.

(1) The Legislature finds and declares:

(a) The occupations of first responders are recognized as stressful occupations. Only our nation's combat soldiers endure more stress. Similar to military personnel, first responders face unique and uniquely dangerous risks in their sworn mission to keep the public safe. They rely on each other for survival to protect the communities they serve;

(b) On any given day, first responders can be called on to make life and death decisions, witness a young child dying with the child's grief-stricken family, make a decision that will affect a community member for the rest of such person's life, or be exposed to a myriad of communicable diseases and known carcinogens;

(c) On any given day, first responders protect high-risk individuals from themselves and protect the community from such individuals;

(d) First responders are constantly at significant risk of bodily harm or physical assault while they perform their duties;

(e) Constant, cumulative exposure to horrific events make first responders uniquely susceptible to the emotional and behavioral impacts of job-related stressors;

(f) Trauma-related injuries can become overwhelming and manifest in post-traumatic stress, which may result in substance use disorders and even, tragically, suicide; and

(g) It is imperative for society to recognize occupational injuries related to post-traumatic stress and to promptly seek diagnosis and treatment without stigma. This includes recognizing that mental injury and mental illness as a result of trauma is not disordered, but is a normal and natural human response to trauma, the negative effects of which can be ameliorated through diagnosis and effective treatment.

(2) Personal injury includes mental injuries and mental illness unaccompanied by physical injury for an employee who is a first responder, frontline state employee, or county correctional officer if such employee:

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

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

(3) The employee bears the burden of establishing the matters described in subsection (2) of this section by a preponderance of the evidence.

(4) Until January 1, 2028, a first responder may establish prima facie evidence of a personal injury that is a mental injury or mental illness if the first responder:

(a) Presents evidence that the first responder underwent a mental health examination by a mental health professional upon entry into such service or subsequent to such entry and before the onset of the mental injury or mental illness and such examination did not reveal the mental injury or mental illness for which the first responder seeks compensation;

(b) Presents testimony or an affidavit from a mental health professional stating the first responder suffers from a mental injury or mental illness caused by one or more events or series of events which cumulatively produced the mental injury or mental illness which brought about the need for medical attention and the interruption of employment;

(c) Presents evidence that such events or series of events arose out of and in the course of the first responder's employment; and

(d) Presents evidence that, prior to the employment conditions which caused the mental injury or mental illness, the first responder had participated in resilience training and updated the training at least annually thereafter.

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

(6)(a) The Department of Health and Human Services shall reimburse a first responder for the cost of annual resilience training not reimbursed by the first responder's employer. The department shall pay reimbursement at a rate determined by the Critical Incident Stress Management Program under section

71-7104. Reimbursement shall be subject to the annual limit set by such program under section 71-7104.

(b) To obtain reimbursement under this subsection, a first responder shall submit an application to the Department of Health and Human Services on a form and in a manner prescribed by the department.

(7) The Department of Health and Human Services shall maintain and annually update records of first responders who have completed annual resilience training.

(8) For purposes of this section:

(a) County correctional officer means a correctional officer employed by a high-population county whose:

(i) Position obligates such employee to maintain order and custody of inmates in a county jail; and

(ii) Duties involve regular and direct interaction with high-risk individuals;

(b) Custody means:

(i) Under the charge or control of a state institution or state agency and includes time spent outside of the state institution or state agency; or

(ii) In the custody of a county jail in a high-population county or in the process of being placed in the custody of a county jail in a high-population county;

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

(d) Frontline state employee means an employee of the Department of Correctional Services or the Department of Health and Human Services whose duties involve regular and direct interaction with high-risk individuals;

(e) High-population county means a county with more than three hundred thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census;

(f) High-risk individual means an individual in custody for whom violent or physically intimidating behavior is common, including, but not limited to, a committed offender as defined in section 83-170, a patient at a regional center as defined in section 71-911, a juvenile committed to a youth rehabilitation and treatment center, and a person in the custody of a county jail in a high-population county or in the process of being placed in the custody of a county jail in a high-population county;

(g) Mental health professional means:

(i) A practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act;

(ii) A practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact;

(iii) A person licensed as an independent mental health practitioner under the Mental Health Practice Act; or

(iv) A professional counselor who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact; and

(h) Resilience training means training that meets the guidelines established by the Critical Incident Stress Management Program under section 71-7104 and that teaches how to adapt to, manage, and recover from adversity, trauma, tragedy, threats, or significant sources of stress.

(9) All other provisions of the Nebraska Workers' Compensation Act apply to this section.

Source: Laws 2010, LB780, § 1; Laws 2012, LB646, § 2; Laws 2017, LB444, § 2; Laws 2020, LB963, § 1; Laws 2021, LB273, § 5; Laws 2021, LB407, § 1; Laws 2022, LB752, § 28.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Psychology Interjurisdictional Compact, see section 38-3901.

ARTICLE 2
GENERAL PROVISIONS

Section
48-239. COVID-19 vaccine; employer; requirements; vaccine exemption form; contents.

48-239 COVID-19 vaccine; employer; requirements; vaccine exemption form; contents.

(1) For purposes of this section:

(a) COVID-19 means the novel coronavirus identified as SARS-CoV-2; any disease caused by SARS-CoV-2, its viral fragments, or a virus mutation therefrom; and all conditions associated with the disease which are caused by SARS-CoV-2, its viral fragments, or a virus mutation therefrom;

(b) Department means the Department of Health and Human Services;

(c)(i) Employer means a person engaged in an industry who has one or more employees;

(ii) Employer also includes any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act regardless of the number of employees and includes the State of Nebraska, governmental agencies, and political subdivisions; and

(iii) Employer does not include (A) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe or (B) a bona fide private membership club, other than a labor organization, which is exempt from taxation under section 501(c) of the Internal Revenue Code;

(d) Health care practitioner means a person licensed under (i) the Medicine and Surgery Practice Act to practice medicine and surgery or osteopathic medicine and surgery, (ii) the Medicine and Surgery Practice Act to practice as a physician assistant, or (iii) the Advanced Practice Registered Nurse Practice Act to practice as an advanced practice registered nurse;

(e) Medicare-certified or medicaid-certified provider or supplier means any entity, including, but not limited to, a health care facility as defined in section 71-413, that is a medicare-certified or medicaid-certified provider or supplier and that is subject to the federal Centers for Medicare and Medicaid Services' COVID-19 health care staff vaccination requirements; and

(f) Vaccine exemption form means the form created by the department under subsection (2) of this section.

(2)(a) The department shall develop a vaccine exemption form for an individual to claim an exemption from receiving a COVID-19 vaccine as provided in this section. The department shall make the form available on the department's website within fifteen days after March 1, 2022.

(b) The form shall include a declaration by the individual seeking an exemption that:

(i) A health care practitioner has provided the individual with a signed written statement that, in the health care practitioner's opinion, (A) receiving a COVID-19 vaccine is medically contraindicated for the individual or (B) medical necessity requires the individual to delay receiving such vaccine; or

(ii) Receiving a COVID-19 vaccine would conflict with the individual's sincerely held religious belief, practice, or observance.

(3) Subject to subsection (5) of this section, an employer that requires applicants or employees to be vaccinated against COVID-19 shall allow for an exemption to such requirement for an individual who provides the employer with:

(a) A completed vaccine exemption form; and

(b) For an individual claiming an exemption based on the statement of a health care practitioner, a copy of such signed written statement.

(4) An employer may require an employee granted an exemption under this section to:

(a) Be periodically tested for COVID-19 at the employer's expense; and

(b) Wear or use personal protective equipment provided by the employer.

(5) A medicare-certified or medicaid-certified provider or supplier or a federal contractor may require additional processes, documentation, or accommodations as necessary to be in compliance with federal law and to maintain compliance with the rules and regulations of the federal Centers for Medicare and Medicaid Services.

Source: Laws 2022, LB906, § 1.
Effective date March 1, 2022.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Health Care Facility Licensure Act, see section 71-401.
Medicine and Surgery Practice Act, see section 38-2001.
Nebraska Investment Finance Authority Act, see section 58-201.

ARTICLE 3
CHILD LABOR

Section
48-302. Children under sixteen; employment certificate required; enforcement of section.

Section
48-303. Employment certificate; approval by school officer; report; investigation.

48-302 Children under sixteen; employment certificate required; enforcement of section.

(1) No child under sixteen years of age shall be employed or permitted or suffered to work in any employment as defined in section 48-301 within this state unless the person or corporation employing the child procures and keeps on file, accessible to the attendance officers and to the Department of Labor and its assistants and employees, an employment certificate as prescribed in section 48-304 and keeps one complete list of all such children employed in the building on file in the building in which such children are employed.

(2) Upon the termination of the employment of a child so registered whose certificate is so filed, such certificate shall be transmitted by the employer to the person authorizing the certificate pursuant to section 48-303 and shall be turned over to such child upon demand.

(3) Any attendance officer or the Department of Labor or its assistants and employees may demand that any employer in whose place of business a child apparently under the age of sixteen years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this section, either furnish within ten days satisfactory evidence that such child is in fact over sixteen years of age or cease to employ or permit or suffer such child to work in such place of business. The same evidence of the age of such child may be required from such employer as is required on the issuance of an employment certificate as provided in section 48-304, and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child.

(4) In case such employer fails to produce and deliver to the attendance officer or the Commissioner of Labor within ten days after demand such evidence of the age of any child as may be required under the provisions of section 48-304 and continues to employ such child or permit or suffer such child to work in such place of business, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for a violation of this section that such child is under sixteen years of age and is unlawfully employed.

Source: Laws 1907, c. 66, § 2, p. 259; R.S.1913, § 3576; Laws 1919, c. 190, tit. IV, art. III, § 2, p. 550; C.S.1922, § 7670; C.S.1929, § 48-302; R.S.1943, § 48-302; Laws 1963, c. 290, § 2, p. 868; Laws 1967, c. 296, § 1, p. 804; Laws 1995, LB 330, § 2; Laws 1999, LB 272, § 18; Laws 2022, LB780, § 3.
Effective date July 21, 2022.

48-303 Employment certificate; approval by school officer; report; investigation.

Except as otherwise provided in this section, an employment certificate shall be approved only by the principal of the school the child attends or by a person authorized by him or her in writing or, when there is no principal, by a person authorized by the chief administrative officer of the school or the superintendent of the school district in which the child resides, except that no person authorized by this section may approve such certificate for any child then in or

about to enter his or her own employment or the employment of a firm or corporation of which he or she is a member, officer, or employee or in whose business he or she is interested. If a child who resides in an adjoining state seeks to work in Nebraska, the Department of Labor may approve the employment certificate. The officer or person approving such certificate may administer the oath provided for therein or in any investigation or examination necessary for the approval thereof. No fee shall be charged for approving any such certificate or for administering any oath or rendering any services related thereto. The school approving the employment certificate, or the department if the department has approved the employment certificate, shall establish and maintain proper records where copies of all such certificates and all documents connected therewith shall be filed and preserved and shall provide the necessary clerical services for carrying out sections 48-302 to 48-313. The person who issued the employment certificate shall report to the department any complaint concerning the conditions of employment of a child for whom a certificate is in force. Upon receipt of the report, the department shall make such investigation as it deems advisable to protect an individual child or to promote the youth-work program.

Source: Laws 1907, c. 66, § 3, p. 260; R.S.1913, § 3577; Laws 1919, c. 190, tit. IV, art. III, § 3, p. 551; C.S.1922, § 7671; C.S.1929, § 48-303; R.S.1943, § 48-303; Laws 1967, c. 296, § 2, p. 805; Laws 1987, LB 35, § 2; Laws 1999, LB 272, § 19; Laws 2001, LB 180, § 4; Laws 2018, LB377, § 6; Laws 2022, LB780, § 4. Effective date July 21, 2022.

ARTICLE 6

EMPLOYMENT SECURITY

Section
48-625. Benefits; weekly payment; how computed; suspension; conditions.
48-626. Benefits; maximum annual amount; determination.
48-675. Short-time compensation program; commissioner; decision; eligibility.

48-625 Benefits; weekly payment; how computed; suspension; conditions.

(1) Except as provided in subsection (4) of this section, each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one-fourth of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one-fourth of such benefit amount, he or she shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages pursuant to this subsection or as a result of the application of section 48-628.02, the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.

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

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

(4) To the extent authorized under federal law, if an individual is eligible for an equal or greater weekly benefit amount under a federal unemployment program than the weekly benefit amount which the individual is eligible for under the Employment Security Law, the commissioner shall suspend the payment of state unemployment benefits to such individual while such individual is receiving the federal unemployment benefit. Such suspension shall terminate upon the individual's exhaustion of benefits available under the federal unemployment program. An individual shall not be eligible to receive the federal weekly benefit and the state unemployment weekly benefit during the same week. This subsection shall not apply to any federal unemployment benefit which is paid in addition to the state weekly benefit amount.

Source: Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 234; Laws 1941, c. 94, § 2, p. 382; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-625; Laws 1949, c. 163, § 8, p. 424; Laws 1953, c. 167, § 5, p. 531; Laws 1980, LB 800, § 2; Laws 1982, LB 801, § 1; Laws 1983, LB 248, § 3; Laws 1986, LB 950, § 2; Laws 1987, LB 461, § 1; Laws 1995, LB 1, § 6; Laws 1999, LB 608, § 3; Laws 2005, LB 739, § 8; Laws 2015, LB271, § 5; Laws 2017, LB172, § 26; Laws 2022, LB567, § 1.
Effective date July 21, 2022.

48-626 Benefits; maximum annual amount; determination.

(1) For any benefit year beginning before July 21, 2022, any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (a) twenty-six times his or her weekly benefit amount or (b) one-third of his or her wages in the employment of each employer per calendar quarter of his or her base period; except that when any individual has been separated from his or her employment with a base period employer under circumstances under which he or she was or could have been determined disqualified under section 48-628.10 or 48-628.12, the total benefit amount based on the employment from which he or she was so separated shall be reduced by an amount determined pursuant to subsection (2) of this section, but not more than one reduction may be made for each separation. In no event shall the benefit amount based on employment for any employer be reduced to less than one benefit week when the individual was or could have been determined disqualified under section 48-628.12.

(2) For purposes of determining the reduction of benefits described in subsection (1) of this section:

(a) If the claimant has been separated from his or her employment under circumstances under which he or she was or could have been determined disqualified under section 48-628.12, his or her total benefit amount shall be reduced by:

(i) Two times his or her weekly benefit amount if he or she left work voluntarily for the sole purpose of accepting previously secured, permanent, full-time, insured work, which he or she does accept, which offers a reasonable expectation of betterment of wages or working conditions, or both, and for which he or she earns wages payable to him or her; or

(ii) Thirteen times his or her weekly benefit amount if he or she left work voluntarily without good cause for any reason other than that described in subdivision (2)(a)(i) of this section; and

(b) If the claimant has been separated from his or her employment under circumstances under which he or she was or could have been determined disqualified under section 48-628.10, his or her total benefit amount shall be reduced by fourteen times his or her weekly benefit amount.

(3) For any benefit year beginning on or after July 21, 2022, any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (a) twenty-six times his or her weekly benefit amount or (b) one-third of his or her wages in the employment of each employer per calendar quarter of his or her base period; except that when any individual has been separated from his or her employment with the most recent insured employer under circumstances under which he or she was or could have been determined disqualified under section 48-628.10 or 48-628.12, the total benefit amount based on the employment from which he or she was so separated shall be reduced by an amount determined pursuant to subsection (4) of this section, but not more than one reduction may be made for such separation. In no event shall the benefit amount based on employment for any employer be reduced to less than one benefit week when the individual was or could have been determined disqualified under section 48-628.12.

(4) For purposes of determining the reduction of benefits described in subsection (3) of this section:

(a) If the claimant has been separated from his or her employment under circumstances under which he or she was or could have been determined disqualified under section 48-628.12, his or her total benefit amount shall be reduced by thirteen times his or her weekly benefit amount if he or she left work voluntarily without good cause; and

(b) If the claimant has been separated from his or her employment under circumstances under which he or she was or could have been determined disqualified under section 48-628.10, his or her total benefit amount shall be reduced by fourteen times his or her weekly benefit amount.

(5) For purposes of sections 48-623 to 48-626, wages shall be counted as wages for insured work for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of section 48-603 or subsection (3) of section 48-661 with respect to becoming an employer.

(6) In order to determine the benefits due under this section and sections 48-624 and 48-625, each employer shall make reports, in conformity with reasonable rules and regulations adopted and promulgated by the commissioner, of the wages of any claimant. If any employer fails to make such a report within the time prescribed, the commissioner may accept the statement of such claimant as to his or her wages, and any benefit payments based on such statement of earnings, in the absence of fraud or collusion, shall be final as to the amount.

Source: Laws 1937, c. 108, § 3, p. 375; Laws 1939, c. 56, § 2, p. 235; Laws 1941, c. 94, § 2, p. 382; C.S.Supp.,1941, § 48-703; R.S. 1943, § 48-626; Laws 1945, c. 114, § 3, p. 372; Laws 1949, c. 163, § 9, p. 425; Laws 1959, c. 229, § 2, p. 802; Laws 1963, c. 291, § 2, p. 871; Laws 1967, c. 300, § 1, p. 816; Laws 1972, LB

1392, § 4; Laws 1980, LB 800, § 3; Laws 1985, LB 339, § 20; Laws 1986, LB 950, § 3; Laws 1995, LB 1, § 7; Laws 2017, LB172, § 27; Laws 2017, LB203, § 1; Laws 2022, LB567, § 2.
Effective date July 21, 2022.

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

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

(2) Except as provided in subsection (4) of this section, a short-time compensation plan will only be approved for a contributory employer that (a) is eligible for experience rating under section 48-649.03, (b) has a positive balance in the employer's experience account, (c) has filed all quarterly reports and other reports required under the Employment Security Law, and (d) has paid all obligation assessments, contributions, interest, and penalties due through the date of the employer's application.

(3) Except as provided in subsection (4) of this section, a short-time compensation plan will only be approved for an employer liable for making payments in lieu of contributions that has filed all quarterly reports and other reports required under the Employment Security Law and has paid all obligation assessments, payments in lieu of contributions, interest, and penalties due through the date of the employer's application.

(4) The commissioner may, for good cause shown, waive any requirement in subsection (2) or (3) of this section.

Source: Laws 2014, LB961, § 16; Laws 2017, LB172, § 81; Laws 2022, LB780, § 5.
Effective date July 21, 2022.

ARTICLE 36

NEBRASKA FAIR PAY TO PLAY ACT

Section

48-3601 Act, how cited.

Sections 48-3601 to 48-3609 shall be known and may be cited as the Nebraska Student-Athlete Name, Image, or Likeness Rights Act.

Source: Laws 2020, LB962, § 1; Laws 2022, LB1137, § 1.
Effective date July 21, 2022.

48-3602 Terms, defined.

For purposes of the Nebraska Student-Athlete Name, Image, or Likeness Rights Act:

(1) Athletic grant-in-aid means the money given to a student-athlete by a postsecondary institution for tuition, fees, room, board, and textbooks as consideration for the student-athlete's participation in an intercollegiate sport for such postsecondary institution and does not include compensation for the use of the student-athlete's name, image, or likeness rights or athletic reputation;

(2) Collegiate athletic association means any athletic association, conference, or other group or organization with authority over intercollegiate sports;

(3) Compensation for the use of a student-athlete's name, image, or likeness rights or athletic reputation includes, but is not limited to, consideration received pursuant to an endorsement contract as defined in section 48-2602;

(4) Intercollegiate sport has the same meaning as in section 48-2602;

(5) Postsecondary institution has the same meaning as in section 85-2403;

(6) Professional representation includes, but is not limited to, representation provided by an athlete agent holding a certificate of registration under the Nebraska Uniform Athlete Agents Act, a financial advisor registered under the Securities Act of Nebraska, or an attorney admitted to the bar by order of the Supreme Court of this state;

(7) Sponsor means an individual or organization that pays money or provides goods or services in exchange for advertising rights;

(8) Student-athlete has the same meaning as in section 48-2602; and

(9) Team contract means a contract between a postsecondary institution or a postsecondary institution's athletic department and a sponsor.

Source: Laws 2020, LB962, § 2; Laws 2022, LB1137, § 2.
Effective date July 21, 2022.

Cross References

Nebraska Uniform Athlete Agents Act, see section 48-2601.
Securities Act of Nebraska, see section 8-1123.

48-3603 Name, image, or likeness rights or athletic reputation; compensation of student-athlete; effect; limitations.

(1) No postsecondary institution shall uphold any rule, requirement, standard, or limitation that prevents a student-athlete from fully participating in an intercollegiate sport for such postsecondary institution because such student-athlete earns compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation.

(2) No collegiate athletic association shall penalize a student-athlete or prevent a student-athlete from fully participating in an intercollegiate sport because such student-athlete earns compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation.

(3) No collegiate athletic association shall penalize a postsecondary institution or prevent a postsecondary institution from fully participating in an intercollegiate sport because a student-athlete participating in an intercollegiate sport for such postsecondary institution earns compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation.

(4) No postsecondary institution shall allow compensation earned by a student-athlete for the use of such student-athlete's name, image, or likeness rights or athletic reputation to affect the duration, amount, or eligibility for or renewal of any athletic grant-in-aid or other institutional scholarship, except that compensation earned by a student-athlete for the use of such student-athlete's name, image, or likeness rights or athletic reputation may be used for the calculation of income for determining eligibility for need-based financial aid.

(5) The compensation a student-athlete earns for the use of the student-athlete's name, image, or likeness must be for services actually performed. Student-athletes shall not be paid for contracts that (a) extend beyond the student-athlete's participation in an athletic program at a postsecondary institution, (b) involve the sale or exchange of awards or other items received for athletic participation, (c) involve compensation from a postsecondary institution or a postsecondary institution's employees, or (d) provide compensation for work not performed.

(6) Student-athletes may be prohibited from entering into contracts or agreements or engaging in activity related to the use of the student-athlete's name, image, or likeness for products, services, entities, or activities reasonably deemed to be inconsistent with the educational mission of the postsecondary institution by such postsecondary institution.

(7) Nothing in the Nebraska Student-Athlete Name, Image, or Likeness Rights Act shall limit the ability of a postsecondary institution to establish and enforce standards, requirements, regulations, or obligations for such postsecondary institution's students not inconsistent with the act.

(8) Nothing in the Nebraska Student-Athlete Name, Image, or Likeness Rights Act grants to a student-athlete the right to use any name, trademark, service mark, logo, symbol, or other intellectual property that belongs to the postsecondary institution, regardless of whether the intellectual property is registered, to further the student-athlete's opportunities to earn compensation for the use of the student-athlete's name, image, or likeness.

Source: Laws 2020, LB962, § 3; Laws 2022, LB1137, § 3.
Effective date July 21, 2022.

48-3604 Name, image, or likeness or athletic reputation; contract or agreement, disclosure required; limitation.

Any student-athlete who enters into a contract or agreement that provides compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation shall disclose such contract or agreement to an official of the postsecondary institution for which such student-athlete participates in an intercollegiate sport. The official to which such contract or agreement shall be disclosed shall be designated by each postsecondary institution, and the designation shall be communicated in writing to each student-athlete participating in an intercollegiate sport for such postsecondary institution. Unless otherwise required by law, each postsecondary institution shall be

prohibited from disclosing any terms of such contract or agreement that the student-athlete or the student-athlete's professional representation deems to be a trade secret or otherwise nondisclosable.

Source: Laws 2020, LB962, § 4; Laws 2022, LB1137, § 4.
Effective date July 21, 2022.

48-3605 Name, image, and likeness rights or athletic reputation; contract or agreement, restrictions; conflict with team contract, effect.

(1) No student-athlete shall enter into a contract or agreement with a sponsor that provides compensation to the student-athlete for use of the student-athlete's name, image, and likeness rights or athletic reputation if (a) such contract or agreement requires such student-athlete to display such sponsor's apparel or to otherwise advertise for the sponsor during official team activities and (b) compliance with such contract or agreement requirement would conflict with a team contract. Any postsecondary institution asserting such conflict shall disclose to the student-athlete and the student-athlete's professional representation, if applicable, the full team contract that is asserted to be in conflict. The student-athlete and the student-athlete's professional representation, if applicable, shall be prohibited from disclosing any terms of a team contract that the postsecondary institution deems to be a trade secret or otherwise nondisclosable.

(2) No team contract shall prevent a student-athlete from receiving compensation for the use of such student-athlete's name, image, and likeness rights or athletic reputation when the student-athlete is not engaged in official team activities.

Source: Laws 2020, LB962, § 5; Laws 2022, LB1137, § 5.
Effective date July 21, 2022.

48-3606 Student-athlete; obtain professional representation; effect; postsecondary institutions; education and training.

(1) No postsecondary institution or collegiate athletic association shall penalize a student-athlete or prevent a student-athlete from fully participating in an intercollegiate sport because such student-athlete obtains professional representation in relation to a contract or legal matter related to the use of the student-athlete's name, image, or likeness.

(2) No collegiate athletic association shall penalize a postsecondary institution or prevent a postsecondary institution from fully participating in an intercollegiate sport because a student-athlete participating in an intercollegiate sport for such postsecondary institution obtains professional representation in relation to a contract or legal matter related to the use of the student-athlete's name, image, or likeness.

(3) A postsecondary institution may offer education and training to student-athletes to aid them in understanding the opportunities that may become available to them for the use of their name, image, or likeness, including education in the areas of networking and communication, brand-building and management, financial literacy, and compliance.

Source: Laws 2020, LB962, § 6; Laws 2022, LB1137, § 6.
Effective date July 21, 2022.

48-3607 Act; effect on contracts.

(1) The Nebraska Student-Athlete Name, Image, or Likeness Rights Act shall not be applied in a manner that violates any contract in effect prior to the date determined by a postsecondary institution pursuant to section 48-3609 with regard to such postsecondary institution or any student-athlete who participates in an intercollegiate sport for such postsecondary institution for as long as such contract remains in effect without modification.

(2) On and after the date determined by a postsecondary institution pursuant to section 48-3609, such postsecondary institution shall not enter into, modify, or renew any contract in a manner that conflicts with the Nebraska Student-Athlete Name, Image, or Likeness Rights Act.

Source: Laws 2020, LB962, § 7; Laws 2022, LB1137, § 7.
Effective date July 21, 2022.

48-3608 Civil action authorized; damages, procedure; limitation.

(1) A student-athlete or a postsecondary institution aggrieved by a violation of the Nebraska Student-Athlete Name, Image, or Likeness Rights Act may bring a civil action against the postsecondary institution or collegiate athletic association committing such violation.

(2) A plaintiff who prevails in an action under the Nebraska Student-Athlete Name, Image, or Likeness Rights Act shall be entitled to:

(a) Actual damages;

(b) Such preliminary and other equitable or declaratory relief as may be appropriate; and

(c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3) A public postsecondary institution may be sued upon claims arising under the Nebraska Student-Athlete Name, Image, or Likeness Rights Act only to the extent allowed under the State Tort Claims Act, the State Contract Claims Act, or the State Miscellaneous Claims Act, except that a civil action for a violation of the Nebraska Student-Athlete Name, Image, or Likeness Rights Act may only be brought within one year after the cause of action has accrued.

Source: Laws 2020, LB962, § 8; Laws 2022, LB1137, § 8.
Effective date July 21, 2022.

Cross References

State Contract Claims Act, see section 81-8,302.
State Miscellaneous Claims Act, see section 81-8,294.
State Tort Claims Act, see section 81-8,235.

48-3609 Act, applicability.

Each postsecondary institution shall determine a date on or before July 1, 2023, upon which the Nebraska Student-Athlete Name, Image, or Likeness Rights Act shall begin to apply to such postsecondary institution and the student-athletes who participate in an intercollegiate sport for such postsecondary institution and to any collegiate athletic association or professional representation in interactions with such postsecondary institution or student-athletes.

Source: Laws 2020, LB962, § 9; Laws 2022, LB1137, § 9.
Effective date July 21, 2022.

ARTICLE 37

NEBRASKA STATEWIDE WORKFORCE AND EDUCATION REPORTING SYSTEM ACT

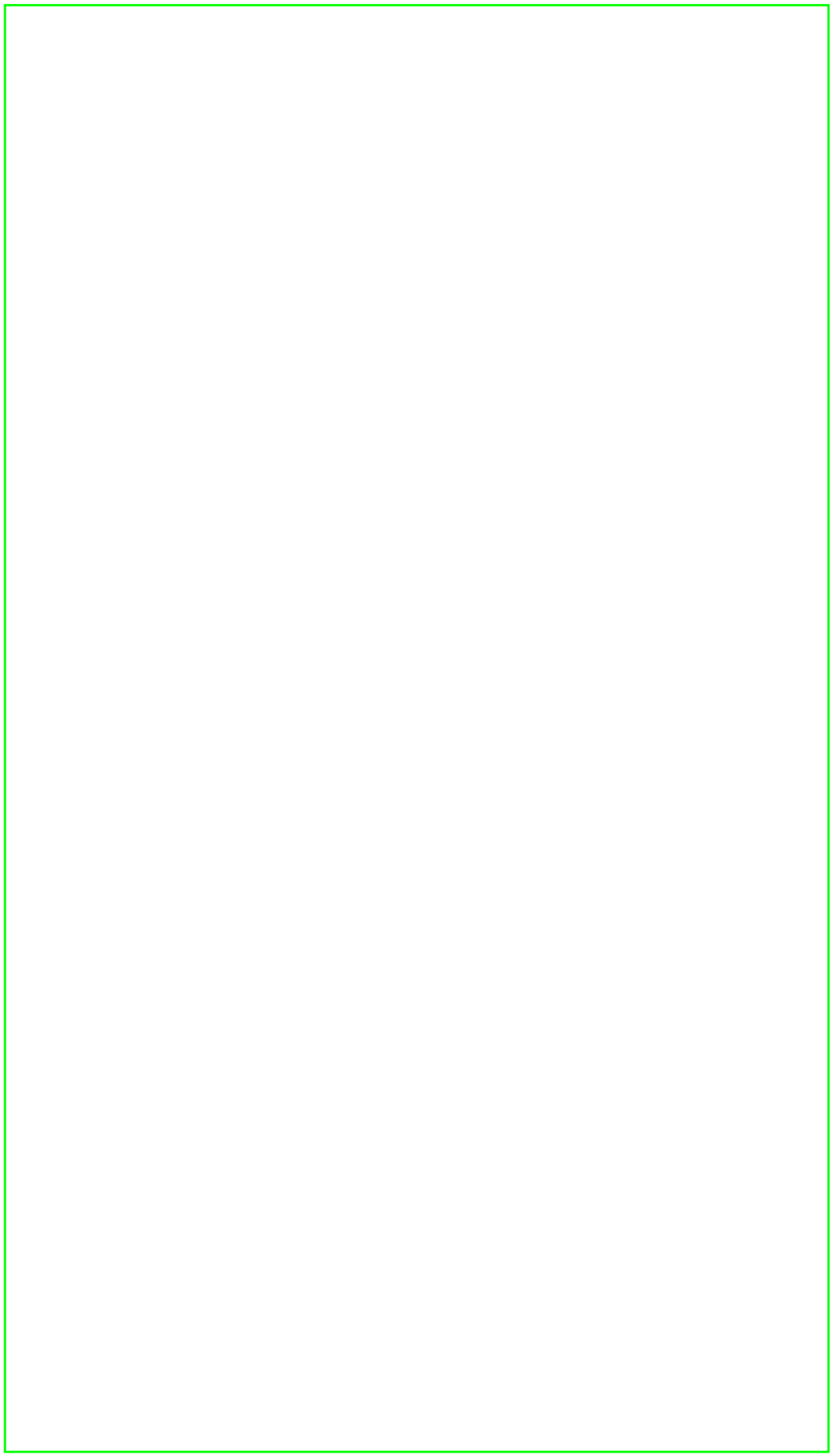
Section
48-3704. Memorandum of understanding; duties; report.

48-3704 Memorandum of understanding; duties; report.

(1) The Department of Labor shall execute a memorandum of understanding with the Nebraska Statewide Workforce and Education Reporting System before December 31, 2020, to ensure the exchange of available Department of Labor data throughout the prekindergarten to postsecondary education to workforce continuum, and may utilize data and agreements under sections 79-776, 85-110, 85-309, and 85-1511.

(2) On or before December 1, 2022, and on or before each December 1 thereafter, the Nebraska Statewide Workforce and Education Reporting System shall issue a report electronically to the Clerk of the Legislature and the Governor. Such report shall provide an overview of research and analysis conducted, additional data needs for future analysis, and organizational structure and needs.

Source: Laws 2020, LB1160, § 4; Laws 2022, LB1130, § 1.
Effective date July 21, 2022.



CHAPTER 49
LAW

Article.
7. Statute Revision. 49-707.
14. Nebraska Political Accountability and Disclosure Act.
(a) General Provisions. 49-1401.
(b) Campaign Practices. 49-1474.03, 49-1479.03.
(d) Conflicts of Interest. 49-1494, 49-1496.

ARTICLE 7
STATUTE REVISION

Section
49-707. Supplements and reissued or replacement volumes of the statutes; distribution; price; disposition of proceeds; receipts.

49-707 Supplements and reissued or replacement volumes of the statutes; distribution; price; disposition of proceeds; receipts.

The supplements and reissued or replacement volumes of the statutes of Nebraska shall be sold and distributed by the Supreme Court at such price as shall be prescribed by the Executive Board of the Legislative Council, which price shall be sufficient to recover all costs of publication and distribution.

The Supreme Court may sell for one dollar per volume any compilation or revision of the statutes of Nebraska that has been superseded by a later official revision, compilation, or replacement volume. The Supreme Court may dispose of any unsold superseded volumes in any manner it deems proper.

All money received by the Supreme Court from the sale of the supplements and reissued or replacement volumes shall be paid into the state treasury to the credit of the Nebraska Statutes Cash Fund or the Nebraska Statutes Distribution Cash Fund, as appropriate. That portion of the money received that represents the costs of publication shall be credited to the Nebraska Statutes Cash Fund, and that portion of the money received that represents the costs of distribution shall be credited to the Nebraska Statutes Distribution Cash Fund. The court shall take receipts for all such money paid into the funds.

Supplements and reissued volumes shall be furnished and delivered free of charge in the same number and to the same parties as are designated in section 49-617.

Source: Laws 1945, c. 119, § 7, p. 394; Laws 1965, c. 306, § 5, p. 862; Laws 1965, c. 305, § 2, p. 860; Laws 1977, LB 8, § 3; Laws 1980, LB 598, § 3; Laws 1986, LB 991, § 1; Laws 1987, LB 572, § 7; Laws 2012, LB576, § 1; Laws 2022, LB708, § 1.
Effective date July 21, 2022.

ARTICLE 14

NEBRASKA POLITICAL ACCOUNTABILITY AND DISCLOSURE ACT

(a) GENERAL PROVISIONS

(b) CAMPAIGN PRACTICES

(d) CONFLICTS OF INTEREST

(a) GENERAL PROVISIONS

49-1401 Act, how cited.

Sections 49-1401 to 49-14,142 shall be known and may be cited as the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 1; Laws 1981, LB 134, § 1; Laws 1986, LB 548, § 11; Laws 1987, LB 480, § 1; Laws 1989, LB 815, § 1; Laws 1991, LB 232, § 1; Laws 1994, LB 872, § 1; Laws 1994, LB 1243, § 2; Laws 1995, LB 28, § 3; Laws 1995, LB 399, § 1; Laws 1997, LB 49, § 1; Laws 1997, LB 420, § 15; Laws 1999, LB 581, § 1; Laws 2000, LB 438, § 1; Laws 2000, LB 1021, § 1; Laws 2001, LB 242, § 1; Laws 2002, LB 1003, § 34; Laws 2005, LB 242, § 2; Laws 2007, LB464, § 2; Laws 2007, LB527, § 1; Laws 2009, LB322, § 1; Laws 2009, LB626, § 1; Laws 2017, LB85, § 3; Laws 2022, LB843, § 51.
Effective date July 21, 2022.

(b) CAMPAIGN PRACTICES

49-1474.03 Campaign advertisement; dissemination; applicability; requirements.

(1) This section applies to any election for the following elective offices: Governor, Lieutenant Governor, Secretary of State, State Treasurer, Attorney General, Auditor of Public Accounts, member of the Board of Regents of the University of Nebraska, member of the State Board of Education, Public Service Commissioner, and member of the Legislature.

(2) For purposes of this section:

(a) Campaign advertisement means a professionally produced visual or audio recording disseminated or caused to be disseminated (i) by a candidate for any elective office listed in this section or by any committee and (ii) for the purpose of supporting or opposing the nomination or election of such a candidate; and

(b) Professionally produced visual or audio recording does not include a broadcast, rebroadcast, livestreamed, or restreamed live forum, question and answer session, townhall meeting, or interview.

(3) No campaign advertisement shall be disseminated:

(a) On television or as a video by means of the Internet unless the campaign advertisement includes closed captioning or the candidate or committee responsible for the campaign advertisement posts a transcript of such campaign advertisement on the candidate's or committee's website; or

(b) On radio unless the candidate or committee responsible for the campaign advertisement posts a transcript of such campaign advertisement on the candidate's or committee's website.

Source: Laws 2022, LB843, § 52.
Effective date July 21, 2022.

49-1479.03 Foreign national; contribution to ballot question committee; prohibited; exception.

(1) For purposes of this section, foreign national means:

(a) An individual who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence;

(b) A person, other than an individual, organized under the laws of or having its principal place of business in a foreign country;

(c) A government of a foreign country; or

(d) A political party or political committee established in a foreign country.

(2) It shall be unlawful for a foreign national, directly or indirectly, to make a contribution to a ballot question committee or for a ballot question committee to solicit, accept, or receive such a contribution.

(3) A person, other than an individual, organized under the laws of the United States which is a domestic subsidiary of a foreign national may make a contribution or an expenditure to support or oppose the qualification, passage, or defeat of a ballot question ballot if:

(a) The person is a discrete entity organized under the laws of any state within the United States and its principal place of business is within the United States;

(b) The foreign national parent does not finance election-related contributions or expenditures either directly or through such person, including through subsidizing the person's business operations, unless the person can demonstrate by a reasonable accounting method that it has sufficient funds from its own domestic operations to make any contributions or expenditures; and

(c) All decisions concerning the administration of the person's contributions or expenditures are made by citizens or permanent residents of the United States.

Source: Laws 2022, LB843, § 53.
Effective date July 21, 2022.

(d) CONFLICTS OF INTEREST

49-1494 Candidates for elective office; statement of financial interest; filing; time.

(1) An individual who files to appear on the ballot for election to an elective office specified in section 49-1493 shall file a statement of financial interests for the preceding calendar year with the commission as provided in this section.

(2) Candidates for the elective offices specified in section 49-1493 who qualify other than by filing shall file a statement for the preceding calendar year with

the commission within five days after becoming a candidate or being appointed to that elective office.

(3) If the candidate for an elective office specified in section 49-1493 files to appear on the ballot for election during the calendar year in which the election is held, the candidate shall file a statement of financial interests for the preceding calendar year with the commission on or before March 1 of the year in which the election is held or, if the filing deadline for the elective office is after March 1 of the year in which the election is held, the candidate shall file such statement on or before the filing deadline for the elective office.

(4) A candidate for an elective office specified in section 49-1493 who fails to file a statement of financial interests as required in subsection (1) or (2) of this section within five days after the deadline in subsection (3) of this section and section 49-1493 shall not appear on the ballot.

(5) A statement of financial interests shall be preserved for a period of not less than five years by the commission.

Source: Laws 1976, LB 987, § 94; Laws 1983, LB 479, § 3; Laws 2001, LB 242, § 10; Laws 2005, LB 242, § 36; Laws 2016, LB400, § 2; Laws 2017, LB451, § 15; Laws 2022, LB843, § 54.
Effective date July 21, 2022.

49-1496 Statement of financial interests; form; contents; enumerated.

(1) The statement of financial interests filed pursuant to sections 49-1493 to 49-14,104 shall be on a form prescribed by the commission.

(2) Individuals required to file under sections 49-1493 to 49-1495 shall file the following information for themselves:

(a) The name and address of and the nature of association with any business with which the individual was associated;

(b) The name and address of any entity in which a position of trustee was held;

(c) The name, address, and nature of business of a person or government body from whom any income in the value of one thousand dollars or more was received and the nature of the services rendered, except that the identification of patrons, customers, patients, or clients of such person from which employment income was received is not required;

(d) A description, but not the value, of the following, if the fair market value thereof exceeded one thousand dollars:

(i) The nature and location of all real property in the state, except any such real property used as a residence of the individual;

(ii) The depository of checking and savings accounts;

(iii) The issuer of stocks, bonds, and government securities; and

(iv) A description of all other property owned or held for the production of income, except property owned or used by a business with which the individual was associated;

(e) The name and address of each creditor to whom the value of one thousand dollars or more was owed or guaranteed by the individual or a member of the individual's immediate family, except for the following:

(i) Accounts payable;

(ii) Debts arising out of retail installment transactions;

(iii) Loans made by financial institutions in the ordinary course of business;

(iv) Loans from a relative; and

(v) Land contracts that have been properly recorded with the county clerk or the register of deeds;

(f) The name, address, and occupation or nature of business of any person from whom a gift in the value of more than one hundred dollars was received, a description of the gift and the circumstances of the gift, and the monetary value category of the gift, based on a good faith estimate by the individual, reported in the following categories:

(i) $100.01 - $200;

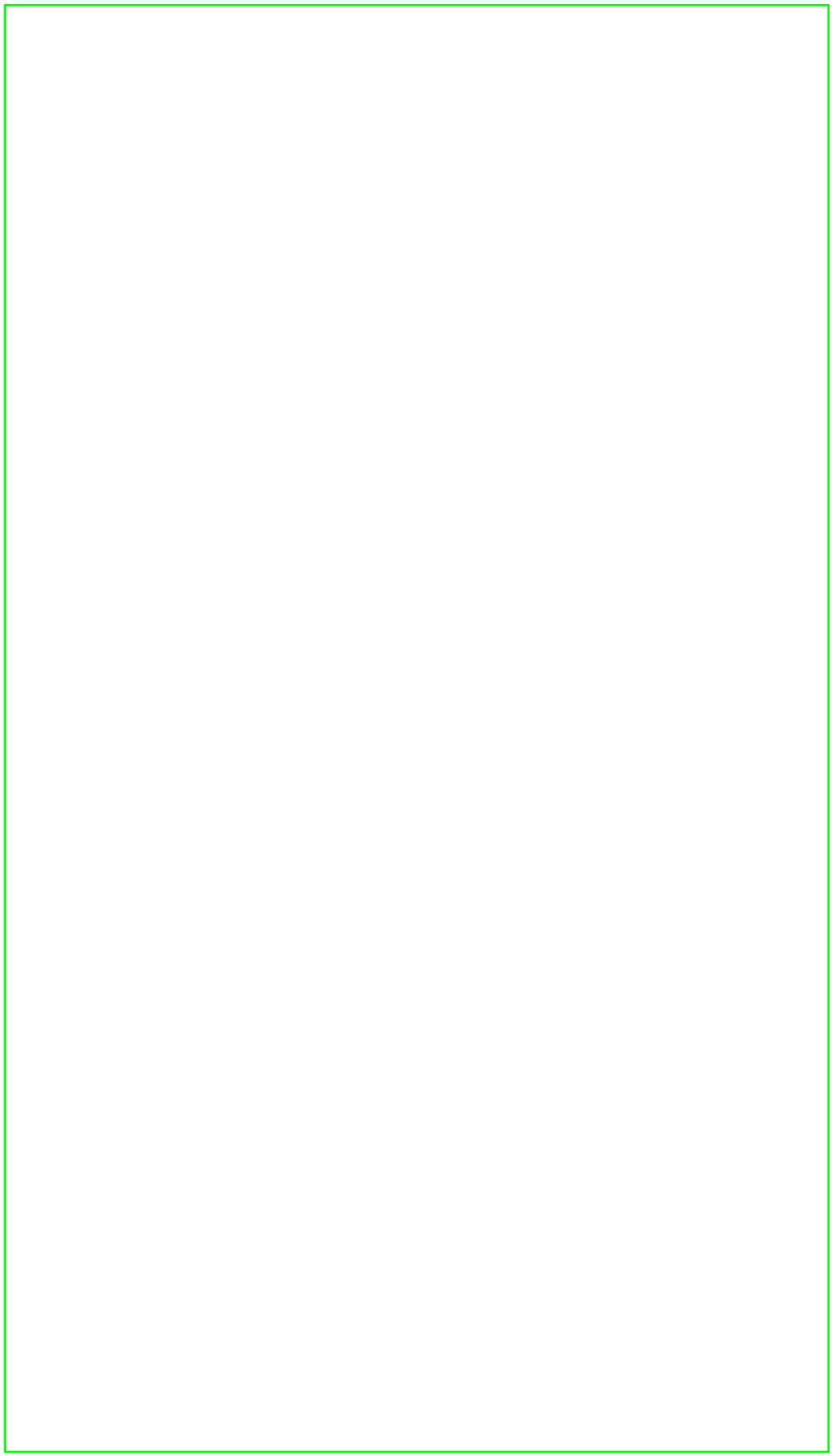
(ii) $200.01 - $500;

(iii) $500.01 - $1,000; and

(iv) $1,000.01 or more; and

(g) Such other information as the individual or the commission deems necessary, after notice and hearing, to carry out the purposes of the Nebraska Political Accountability and Disclosure Act.

Source: Laws 1976, LB 987, § 96; Laws 1980, LB 535, § 17; Laws 1993, LB 121, § 307; Laws 2000, LB 1021, § 8; Laws 2005, LB 242, § 37; Laws 2022, LB786, § 1.
Operative date January 1, 2023.



CHAPTER 50
LEGISLATURE

Article.
4. Legislative Council. 50-401.01.
7. Mental Health Oversight. 50-702.
8. Water Resources. 50-802.

ARTICLE 4
LEGISLATIVE COUNCIL

Section
50-401.01. Legislative Council; executive board; members; selection; powers and duties.

50-401.01 Legislative Council; executive board; members; selection; powers and duties.

(1) The Legislative Council shall have an executive board, to be known as the Executive Board of the Legislative Council, which shall consist of a chairperson, a vice-chairperson, and six members of the Legislature, to be chosen by the Legislature at the commencement of each regular session of the Legislature when the speaker is chosen, and the Speaker of the Legislature. The Legislature at large shall elect two of its members from legislative districts Nos. 1, 17, 30, 32 to 35, 37, 38, 40 to 44, 47, and 48, two from legislative districts Nos. 2, 3, 15, 16, 19, 21 to 29, 45, and 46, and two from legislative districts Nos. 4 to 14, 18, 20, 31, 36, 39, and 49. The Chairperson of the Committee on Appropriations shall serve as a nonvoting ex officio member of the executive board whenever the board is considering fiscal administration.

(2) The executive board shall:

(a) Supervise all services and service personnel of the Legislature and may employ and fix compensation and other terms of employment for such personnel as may be needed to carry out the intent and activities of the Legislature or of the board, unless otherwise directed by the Legislature, including the adoption of policies by the executive board which permit (i) the purchasing of an annuity for an employee who retires or (ii) the crediting of amounts to an employee's deferred compensation account under section 84-1504. The payments to or on behalf of an employee may be staggered to comply with other law; and

(b) Appoint persons to fill the positions of Legislative Fiscal Analyst, Director of Research, Revisor of Statutes, and Legislative Auditor. The persons appointed to these positions shall have training and experience as determined by the executive board and shall serve at the pleasure of the executive board. The Legislative Performance Audit Committee shall recommend the person to be appointed Legislative Auditor. Their respective salaries shall be set by the executive board.

(3) Notwithstanding any other provision of law, the executive board may contract to obtain legal, auditing, accounting, actuarial, or other professional

services or advice for or on behalf of the executive board, the Legislative Council, the Legislature, or any member of the Legislature. The providers of such services or advice shall meet or exceed the minimum professional standards or requirements established or specified by their respective professional organizations or licensing entities or by federal law. Such contracts, the deliberations of the executive board with respect to such contracts, and the work product resulting from such contracts shall not be subject to review or approval by any other entity of state government.

Source: Laws 1937, c. 118, § 1, p. 421; Laws 1939, c. 60, § 1, p. 261; C.S.Supp.,1941, § 50-501; Laws 1943, c. 118, § 1, p. 414; R.S. 1943, § 50-401; Laws 1949, c. 168, § 1(2), p. 445; Laws 1951, c. 169, § 1, p. 655; Laws 1965, c. 310, § 1, p. 872; Laws 1967, c. 595, § 1, p. 2026; Laws 1972, LB 1129, § 1; Laws 1973, LB 485, § 3; Laws 1992, LB 898, § 1; Laws 1993, LB 579, § 2; Laws 1994, LB 1243, § 18; Laws 1997, LB 314, § 2; Laws 2001, LB 75, § 1; Laws 2003, LB 510, § 1; Laws 2006, LB 956, § 1; Laws 2012, LB711, § 1; Laws 2022, LB686, § 1.
Effective date July 21, 2022.

ARTICLE 7

MENTAL HEALTH OVERSIGHT

Section
50-702. Legislative Mental Health Care Capacity Strategic Planning Committee; established; members; independent consultant; recommendations; termination.

50-702 Legislative Mental Health Care Capacity Strategic Planning Committee; established; members; independent consultant; recommendations; termination.

(1) The Legislative Mental Health Care Capacity Strategic Planning Committee is established. The committee shall consist of the following members: (a) The chairperson of the Judiciary Committee of the Legislature or his or her designee, (b) the chairperson of the Health and Human Services Committee of the Legislature or his or her designee, (c) the chairperson of the Appropriations Committee of the Legislature or his or her designee, and (d) four senators selected by the chairperson of the Executive Board of the Legislative Council. The committee shall select a chairperson and vice-chairperson from among its members.

(2)(a) No later than November 1, 2022, the Legislative Mental Health Care Capacity Strategic Planning Committee shall contract with an independent consultant with expertise in inpatient mental health care delivery. The consultant shall assist the committee in determining the necessary capacity for inpatient mental health care beds for both state-operated and privately owned facilities based on best practices in mental health care. The consultant shall provide recommendations to achieve the necessary capacity if the current state inpatient mental health bed capacity is insufficient.

(b) On or before November 1, 2023, the consultant shall provide a written report of its findings and recommendations to the Legislative Mental Health Care Capacity Strategic Planning Committee.

(3) This section terminates on November 1, 2024.

Source: Laws 2022, LB921, § 4.
Effective date July 21, 2022.

ARTICLE 8
WATER RESOURCES

Section
50-802. Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature; established; members; duties; termination.

50-802 Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature; established; members; duties; termination.

(1) The Statewide Tourism And Recreational Water Access and Resource Sustainability (STAR WARS) Special Committee of the Legislature is hereby established as a special legislative committee to exercise the powers and perform the duties provided in this section. The special legislative committee shall consist of no fewer than seven members of the Legislature as determined by the Executive Board of the Legislative Council. The special legislative committee shall consist of the Speaker of the Legislature, who shall serve as chairperson of the special legislative committee, the chairperson of the Natural Resources Committee of the Legislature, one member of the Appropriations Committee of the Legislature, and at least four other members of the Legislature appointed by the executive board. The appointed members of the special legislative committee shall be members who represent legislative districts comprising portions of the areas under study or who otherwise have knowledge of such areas. All appointments shall be made within the first six days of the legislative session in odd-numbered years. Members shall serve two-year terms corresponding with legislative sessions and may be reappointed for consecutive terms.

(2) The Executive Board of the Legislative Council shall provide staff as required by the special legislative committee from existing legislative staff. In addition, the special legislative committee may hire additional staff, make expenditures for travel, and enter into contracts for consulting, engineering, and development studies. The contracts shall be based on competitive bids and subject to approval by the executive board upon the recommendation of a majority of the members of the special legislative committee. It is the intent of the Legislature to appropriate two million dollars for fiscal year 2021-22 to carry out the purposes of this section.

(3)(a) Studies shall be conducted on:

(i) The need to protect public and private property, including use of levee systems, enhance economic development, and promote private investment and the creation of jobs along the Platte River and its tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska;

(ii) The need to provide for public safety, public infrastructure, land-use planning, recreation, and economic development in the Lake McConaughy region of Keith County, Nebraska; and

(iii) The socioeconomic conditions, recreational and tourism opportunities, and public investment necessary to enhance economic development and to

catalyze private investment in the region in Knox County, Nebraska, that lies north of State Highway 12 and extends to the South Dakota border and includes Lewis and Clark Lake and Niobrara State Park.

(b) The study of the Lower Platte River pursuant to subdivision (3)(a)(i) of this section shall not include a study of any dam on a Platte River channel, but may include infrastructure options that maintain the integrity of the main channel of the Platte River. The committee may study dams relating to tributaries of the Platte River and levees in such area.

(c) The studies regarding Lake McConaughy in Keith County and Lewis and Clark Lake and Niobrara State Park in Knox County shall evaluate the outcomes and the economic benefits of proposed development and improvements to residents, the local region, and state tourism.

(4) The special legislative committee may hold hearings and request and receive reports from federal, state, county, city, and village agencies and natural resources districts regarding matters pertaining to such studies. The special legislative committee may hold one or more closed sessions for the receipt of confidential information if at least one-half of the members of the special legislative committee vote in open session to hold a closed session. The special legislative committee may appoint one or more subcommittees for the purpose of receiving public input as it relates to the purposes described in section 50-801 and this section.

(5) The special legislative committee shall endeavor to complete each study on or before December 31, 2021, but such studies shall be completed no later than December 31, 2022.

(6) The special legislative committee shall provide oversight over any projects carried out as a result of any studies completed by the committee to ensure continuity and to ensure that the projects fulfill the goals of the studies as they are implemented. The committee may seek input from local stakeholders regarding such projects. The committee shall also recommend legislative changes that may become necessary at the various stages of the implementation of such projects.

(7) The special legislative committee shall terminate on December 31, 2026.

Source: Laws 2021, LB406, § 2; Laws 2022, LB1023, § 8.
Effective date April 19, 2022.

CHAPTER 53
LIQUORS

Article.
1. Nebraska Liquor Control Act.
   (a) General Provisions. 53-101.
   (d) Licenses; Issuance and Revocation. 53-121 to 53-148.01.
   (i) Prohibited Acts. 53-169 to 53-180.05.

ARTICLE 1
NEBRASKA LIQUOR CONTROL ACT

(a) GENERAL PROVISIONS

Section
53-101. Act, how cited.

(d) LICENSES; ISSUANCE AND REVOCATION

53-121. License; delivery; method.
53-123.12. Farm winery license; application requirements; renewal; fees; licensed premises; temporary expansion; procedure.
53-123.14. Craft brewery license; rights of licensee; self-distribution; conditions.
53-123.16. Microdistillery license; rights of licensee.
53-124.11. Special designated license; issuance; procedure; fee.
53-124.12. Annual catering license; issuance; procedure; fee; occupation tax.
53-129. Retail, bottle club, craft brewery, and microdistillery licenses; premises to which applicable; temporary expansion; procedure.
53-131.01. License; application; form; contents; criminal history record check; false statement; penalty.
53-132. Retail, bottle club, craft brewery, or microdistillery license; commission; duties.
53-135. Retail or bottle club licenses; automatic renewal; conditions.
53-148.01. Retail or bottle club licensee; warning sign; commission; duties.

(i) PROHIBITED ACTS

53-169. Manufacturer or wholesaler; craft brewery, manufacturer, or microdistillery licensee; limitations.
53-171. Licenses; issuance of more than one kind to same person; when unlawful; craft brewery, manufacturer, or microdistillery licensee; limitations.
53-180.04. Minors; warning notice; posting.
53-180.05. Prohibited acts relating to minors and incompetents; violations; penalties; possible alcohol overdose; actions authorized; false identification; penalty; law enforcement agency; duties.

(a) GENERAL PROVISIONS

53-101 Act, how cited.

Sections 53-101 to 53-1,122 shall be known and may be cited as the Nebraska Liquor Control Act.

Source: Laws 1935, c. 116, § 1, p. 373; C.S.Supp.,1941, § 53-301; R.S. 1943, § 53-101; Laws 1988, LB 490, § 3; Laws 1988, LB 901, § 1; Laws 1988, LB 1089, § 1; Laws 1989, LB 70, § 1; Laws 1989, LB 441, § 1; Laws 1989, LB 781, § 1; Laws 1991, LB 344, § 2; Laws 1991, LB 582, § 1; Laws 1993, LB 183, § 1; Laws

1993, LB 332, § 1; Laws 1994, LB 1292, § 1; Laws 2000, LB 973, § 1; Laws 2001, LB 114, § 1; Laws 2004, LB 485, § 2; Laws 2006, LB 845, § 1; Laws 2007, LB549, § 1; Laws 2007, LB578, § 1; Laws 2009, LB232, § 1; Laws 2009, LB355, § 1; Laws 2010, LB258, § 1; Laws 2010, LB861, § 7; Laws 2011, LB407, § 1; Laws 2012, LB824, § 1; Laws 2012, LB1130, § 1; Laws 2015, LB118, § 2; Laws 2015, LB330, § 2; Laws 2018, LB1120, § 1; Laws 2020, LB734, § 1; Laws 2021, LB274, § 1; Laws 2022, LB1204, § 1.
Effective date July 21, 2022.

(d) LICENSES; ISSUANCE AND REVOCATION

53-121 License; delivery; method.

When delivering any type of license under the Nebraska Liquor Control Act to a licensee, the commission may use mail or electronic delivery.

Source: Laws 2022, LB1204, § 2.
Effective date July 21, 2022.

53-123.12 Farm winery license; application requirements; renewal; fees; licensed premises; temporary expansion; procedure.

(1) Any person desiring to obtain a new license to operate a farm winery shall:

(a) File an application with the commission upon such forms as the commission from time to time prescribes;

(b) Pay the license fee to the commission under sections 53-124 and 53-124.01, which fee shall be returned to the applicant if the application is denied; and

(c) Pay the nonrefundable application fee to the commission in the sum of four hundred dollars.

(2) To renew a farm winery license, a farm winery licensee shall file an application with the commission, pay the license fee under sections 53-124 and 53-124.01, and pay the renewal fee of forty-five dollars.

(3) License fees, application fees, and renewal fees may be paid to the commission by certified or cashier's check of a bank within this state, personal or business check, United States post office money order, or cash in the full amount of such fees.

(4) For a new license, the commission shall then notify the municipal clerk of the city or incorporated village where such license is sought or, if the license is not sought within a city or incorporated village, the county clerk of the county where such license is sought of the receipt of the application and shall include with such notice one copy of the application. No such license shall then be issued by the commission until the expiration of at least forty-five days from the date of receipt by mail or electronic delivery of such application from the commission. Within thirty-five days from the date of receipt of such application from the commission, the local governing bodies of nearby cities or villages or the county may make and submit to the commission recommendations relative to the granting of or refusal to grant such license to the applicant.

(5)(a) A farm winery licensee may apply to the local governing body for a temporary expansion of the licensed premises to an immediately adjacent area owned or leased by the licensee or to an immediately adjacent street, parking lot, or alley, not to exceed fifty days for calendar year 2020 and, for each calendar year thereafter, not to exceed fifteen days per calendar year. The temporary area shall comply with the Nebraska Liquor Control Act for consumption on the premises and shall be subject to the following conditions: (i) The temporary area shall be enclosed during the temporary expansion by a temporary fence or other means approved by the county, city, or village; (ii) the temporary area shall have easily identifiable entrances and exits; and (iii) the licensee shall ensure that the area meets all sanitation requirements for a licensed premises. The local governing body shall electronically notify the commission within five days after the authorization of any temporary expansion pursuant to this subsection.

(b) The licensee shall file an application with the local governing body which shall contain (i) the name of the applicant, (ii) the premises for which a temporary expansion is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (iii) the name of the owner or lessee of the premises for which the temporary expansion is requested, (iv) sufficient evidence that the licensee will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (v) a statement of the type of activity to be carried on during the time period for which a temporary expansion is requested, and (vi) sufficient evidence that the temporary expansion will be supervised by persons or managers who are agents of and directly responsible to the licensee.

(c) No temporary expansion provided for by this subsection shall be granted without the approval of the local governing body. The local governing body may establish criteria for approving or denying a temporary expansion. The local governing body may designate an agent to determine whether a temporary expansion is to be approved or denied. Such agent shall follow criteria established by the local governing body in making the determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body.

(d) For purposes of this section, the local governing body shall be that of the city or village within which the premises for which the temporary expansion is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be that of the county within which the premises for which the temporary expansion is requested are located.

(e) The decision of the local governing body shall be final. If the applicant does not qualify for a temporary expansion, the temporary expansion shall be denied by the local governing body.

(f) The city, village, or county clerk shall deliver confirmation of the temporary expansion to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Source: Laws 1985, LB 279, § 7; Laws 1988, LB 1089, § 10; Laws 1991, LB 202, § 2; Laws 2000, LB 973, § 3; Laws 2010, LB861, § 53;

Laws 2011, LB407, § 3; Laws 2020, LB1056, § 5; Laws 2022, LB1204, § 3.
Effective date July 21, 2022.

53-123.14 Craft brewery license; rights of licensee; self-distribution; conditions.

(1) Any person who operates a craft brewery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a craft brewery shall permit the production of a maximum of twenty thousand barrels of beer per year in the aggregate from all physical locations comprising the licensed premises. A craft brewery may also sell to beer wholesalers for sale and distribution to licensed retailers. A craft brewery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of beer for consumption on or off the licensed premises, except that the sale of any beer other than beer manufactured by the craft brewery licensee, wine, or alcoholic liquor by the drink for consumption on the licensed premises shall require the appropriate retail license. Any license held by the operator of a craft brewery shall be subject to the act. A holder of a craft brewery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, an entertainment district license pursuant to section 53-123.17, or a promotional farmers market special designated license pursuant to section 53-124.16. For purposes of this section, licensed premises may include up to five separate physical locations.

(2)(a) A holder of a craft brewery license may directly sell for resale up to two hundred fifty barrels per calendar year of beer produced at its licensed premises directly to retail licensees located in the State of Nebraska which hold the appropriate retail license if the holder of the craft brewery license:

(i) Only self-distributes its beer in a territory in which the craft brewery licensee has not entered into a distribution agreement with a licensed Nebraska wholesaler for the territory where such retail licensee is located;

(ii) Self-distributes its beer utilizing only persons exclusively and solely employed by the craft brewery licensee in vehicles exclusively and solely owned or leased by the craft brewery licensee; and

(iii) Complies with all relevant statutes, rules, and regulations that apply to Nebraska beer wholesalers regarding distribution of such beer.

(b) A holder of a craft brewery license self-distributing beer in accordance with subdivision (2)(a) of this section may only self-distribute beer brewed at its licensed brewery premises and shall not distribute beer produced by any other licensee.

(3) A holder of a craft brewery license may store and warehouse tax-paid products produced on such licensee's licensed premises in a designated, secure, offsite storage facility if the holder of the craft brewery license receives authorization from the commission and notifies the commission of the location of the storage facility and maintains, at the craft brewery and at the storage facility, a separate perpetual inventory of the product stored at the storage facility. Consumption of alcoholic liquor at the storage facility is strictly prohibited.

(4) The commission may adopt and promulgate rules and regulations pertaining to distribution rights of craft brewery licensees.

Source: Laws 1988, LB 1089, § 3; Laws 1991, LB 344, § 25; Laws 1994, LB 1292, § 3; Laws 1996, LB 750, § 5; Laws 2012, LB780, § 3; Laws 2012, LB1130, § 4; Laws 2016, LB1105, § 12; Laws 2021, LB274, § 11; Laws 2022, LB1236, § 1.
Effective date July 21, 2022.

53-123.16 Microdistillery license; rights of licensee.

Any person who operates a microdistillery shall obtain a license pursuant to the Nebraska Liquor Control Act. A license to operate a microdistillery shall permit the licensee to produce a maximum of one hundred thousand gallons of liquor per year in the aggregate from all physical locations comprising the licensed premises. For purposes of this section, licensed premises may include up to five separate physical locations. A microdistillery may also sell to licensed wholesalers for sale and distribution to licensed retailers. A microdistillery license issued pursuant to this section shall be the only license required by the Nebraska Liquor Control Act for the manufacture and retail sale of microdistilled product for consumption on or off the licensed premises, except that the sale of any beer, wine, or alcoholic liquor, other than microdistilled product manufactured by the microdistillery licensee, by the drink for consumption on the microdistillery premises shall require the appropriate retail license. Any license held by the operator of a microdistillery shall be subject to the act. A holder of a microdistillery license may obtain an annual catering license pursuant to section 53-124.12, a special designated license pursuant to section 53-124.11, an entertainment district license pursuant to section 53-123.17, or a promotional farmers market special designated license pursuant to section 53-124.16. The commission may, upon the conditions it determines, grant to any microdistillery licensed under this section a special license authorizing the microdistillery to purchase and to import, from such persons as are entitled to sell the same, wines or spirits to be used solely as ingredients and for the sole purpose of blending with and flavoring microdistillery products as a part of the microdistillation process.

Source: Laws 2007, LB549, § 6; Laws 2012, LB1130, § 5; Laws 2021, LB274, § 12; Laws 2022, LB1236, § 2.
Effective date July 21, 2022.

53-124.11 Special designated license; issuance; procedure; fee.

(1) The commission may issue a special designated license for sale or consumption of alcoholic liquor at a designated location to a retail licensee, a craft brewery licensee, a microdistillery licensee, a farm winery licensee, the holder of a manufacturer's license issued pursuant to subsection (2) of section 53-123.01, a municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, under conditions specified in this section. The applicant shall demonstrate meeting the requirements of this subsection.

(2)(a) No retail licensee, craft brewery licensee, microdistillery licensee, farm winery licensee, holder of a manufacturer's license issued pursuant to subsection (2) of section 53-123.01, organization, or corporation enumerated in subsection (1) of this section may be issued a special designated license under this section for more than six calendar days in any one calendar year. Only one special designated license shall be required for any application for two or more consecutive days.

(b) A municipal corporation, a fine arts museum incorporated as a nonprofit corporation, a religious nonprofit corporation which has been exempted from the payment of federal income taxes, a political organization which has been exempted from the payment of federal income taxes, or any other nonprofit corporation the purpose of which is fraternal, charitable, or public service and which has been exempted from the payment of federal income taxes, may apply for special designated licenses for the same location in a single application. The application shall include all dates and times for which a special designated license is being requested at such location.

(c) This subsection shall not apply to any holder of a catering license.

(3) Except for any special designated license issued to a holder of a catering license or to an organization or corporation as provided in subdivision (2)(b) of this section, there shall be a fee of forty dollars for each day identified in the special designated license. For a special designated license issued to an organization or corporation as provided in subdivision (2)(b) of this section, there shall be a fee of forty dollars for the initial special designated license and ten dollars for each additional day beyond the first at the same location in such application. Such fee shall be submitted with the application for the special designated license, collected by the commission, and remitted to the State Treasurer for credit to the General Fund. The applicant shall be exempt from the provisions of the Nebraska Liquor Control Act requiring an application or renewal fee and the provisions of the act requiring the expiration of forty-five days from the time the application is received by the commission prior to the issuance of a license, if granted by the commission. The retail licensees, craft brewery licensees, microdistillery licensees, farm winery licensees, holders of manufacturer's licenses issued pursuant to subsection (2) of section 53-123.01, municipal corporations, organizations, and nonprofit corporations enumerated in subsection (1) of this section seeking a special designated license shall file an application on such forms as the commission may prescribe. Such forms shall contain, along with other information as required by the commission, (a) the name of the applicant, (b) the premises for which a special designated license is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (c) the name of the owner or lessee of the premises for which the special designated license is requested, (d) sufficient evidence that the holder of the special designated license, if issued, will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (e) a statement of the type of activity to be carried on during the time period for which a special designated license is requested, and (f) sufficient evidence that the activity will be supervised by persons or managers who are agents of and directly responsible to the holder of the special designated license.

(4) No special designated license provided for by this section shall be issued by the commission without the approval of the local governing body. The local

governing body may establish criteria for approving or denying a special designated license. The local governing body may designate an agent to determine whether a special designated license is to be approved or denied. Such agent shall follow criteria established by the local governing body in making his or her determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body. For purposes of this section, the local governing body shall be the city or village within which the premises for which the special designated license is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be the county within which the premises for which the special designated license is requested are located.

(5) If the applicant meets the requirements of this section, a special designated license shall be granted and issued by the commission for use by the holder of the special designated license. All statutory provisions and rules and regulations of the commission that apply to a retail licensee shall apply to the holder of a special designated license with the exception of such statutory provisions and rules and regulations of the commission so designated by the commission and stated upon the issued special designated license, except that the commission may not designate exemption of sections 53-180 to 53-180.07. The decision of the commission shall be final. If the applicant does not qualify for a special designated license, the application shall be denied by the commission.

(6) A special designated license issued by the commission shall be mailed or delivered electronically to the city, village, or county clerk who shall deliver such license to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Source: Laws 1983, LB 213, § 9; Laws 1988, LB 490, § 5; Laws 1991, LB 344, § 27; Laws 1994, LB 1292, § 4; Laws 1996, LB 750, § 7; Laws 2000, LB 973, § 4; Laws 2006, LB 562, § 4; Laws 2007, LB549, § 8; Laws 2010, LB861, § 58; Laws 2016, LB1105, § 17; Laws 2019, LB56, § 1; Laws 2022, LB1236, § 3.
Effective date July 21, 2022.

53-124.12 Annual catering license; issuance; procedure; fee; occupation tax.

(1) The holder of a license to sell alcoholic liquor at retail issued under subsection (6) of section 53-124, a craft brewery license, a microdistillery license, a farm winery license, or a manufacturer's license issued under subsection (2) of section 53-123.01 may obtain an annual catering license as prescribed in this section. The catering license shall be issued for the same period and may be renewed in the same manner as the retail license, craft brewery license, microdistillery license, farm winery license, or manufacturer's license.

(2) Any person desiring to obtain a catering license shall file with the commission:

(a) An application upon such forms as the commission prescribes; and

(b) A license fee of one hundred dollars payable to the commission, which fee shall be returned to the applicant if the application is denied.

(3) When an application for a catering license is filed, the commission shall notify the clerk of the city or incorporated village in which such applicant is

located or, if the applicant is not located within a city or incorporated village, the county clerk of the county in which such applicant is located, of the receipt of the application. The commission shall include with such notice one copy of the application by mail or electronic delivery. The local governing body and the commission shall process the application in the same manner as provided in section 53-132.

(4) The local governing body with respect to catering licensees within its liquor license jurisdiction as provided in subsection (5) of this section may cancel a catering license for cause for the remainder of the period for which such catering license is issued. Any person whose catering license is canceled may appeal to the district court of the county in which the local governing body is located.

(5) For purposes of this section, local governing body means (a) the governing body of the city or village in which the catering licensee is located or (b) if such licensee is not located within a city or village, the governing body of the county in which such licensee is located.

(6) The local governing body may impose an occupation tax on the business of a catering licensee doing business within the liquor license jurisdiction of the local governing body as provided in subsection (5) of this section. Such tax may not exceed double the license fee to be paid under this section.

Source: Laws 1988, LB 490, § 1; Laws 1991, LB 344, § 28; Laws 1994, LB 1292, § 5; Laws 1996, LB 750, § 8; Laws 2001, LB 278, § 5; Laws 2004, LB 485, § 17; Laws 2006, LB 562, § 5; Laws 2007, LB549, § 9; Laws 2010, LB861, § 59; Laws 2011, LB407, § 4; Laws 2016, LB1105, § 18; Laws 2022, LB1204, § 4.
Effective date July 21, 2022.

53-129 Retail, bottle club, craft brewery, and microdistillery licenses; premises to which applicable; temporary expansion; procedure.

(1) Except as otherwise provided in subsection (3) of this section, retail, bottle club, craft brewery, and microdistillery licenses issued under the Nebraska Liquor Control Act apply only to that part of the premises described in the application approved by the commission and in the license issued on the application. For retail and bottle club licenses, only one location shall be described in each license. For craft brewery and microdistillery licenses, up to five separate physical locations may be described in each license.

(2) After such license has been granted for the particular premises, the commission, with the approval of the local governing body and upon proper showing, may endorse upon the license permission to add to, delete from, or abandon the premises described in such license and, if applicable, to move from the premises to other premises approved by the local governing body. In order to obtain such approval, the retail, bottle club, craft brewery, or microdistillery licensee shall file with the local governing body a request in writing and a statement under oath which shows that the premises, as added to or deleted from or to which such move is to be made, comply in all respects with the requirements of the act. No such addition, deletion, or move shall be made by any such licensee until the license has been endorsed to that effect in writing by the local governing body and by the commission and the licensee furnishes proof of payment of the renewal fee prescribed in subsection (4) of section 53-131.

(3)(a) A retail, bottle club, craft brewery, or microdistillery licensee may apply to the local governing body for a temporary expansion of its licensed premises to an immediately adjacent area owned or leased by the licensee or to an immediately adjacent street, parking lot, or alley, not to exceed fifty days for calendar year 2020 and, for each calendar year thereafter, not to exceed fifteen days per calendar year. The temporary area shall otherwise comply with all requirements of the Nebraska Liquor Control Act.

(b) The licensee shall file an application with the local governing body which shall contain (i) the name of the applicant, (ii) the premises for which a temporary expansion is requested, identified by street and number if practicable and, if not, by some other appropriate description which definitely locates the premises, (iii) the name of the owner or lessee of the premises for which the temporary expansion is requested, (iv) sufficient evidence that the licensee will carry on the activities and business authorized by the license for himself, herself, or itself and not as the agent of any other person, group, organization, or corporation, for profit or not for profit, (v) a statement of the type of activity to be carried on during the time period for which a temporary expansion is requested, and (vi) sufficient evidence that the temporary expansion will be supervised by persons or managers who are agents of and directly responsible to the licensee.

(c) No temporary expansion provided for by this subsection shall be granted without the approval of the local governing body. The local governing body may establish criteria for approving or denying a temporary expansion. The local governing body may designate an agent to determine whether a temporary expansion is to be approved or denied. Such agent shall follow criteria established by the local governing body in making the determination. The determination of the agent shall be considered the determination of the local governing body unless otherwise provided by the local governing body.

(d) For purposes of this section, the local governing body shall be that of the city or village within which the premises for which the temporary expansion is requested are located or, if such premises are not within the corporate limits of a city or village, then the local governing body shall be that of the county within which the premises for which the temporary expansion is requested are located.

(e) The decision of the local governing body shall be final. If the applicant does not qualify for a temporary expansion, the temporary expansion shall be denied by the local governing body.

(f) The city, village, or county clerk shall deliver confirmation of the temporary expansion to the licensee upon receipt of any fee or tax imposed by such city, village, or county.

Source: Laws 1935, c. 116, § 49, p. 405; C.S.Supp.,1941, § 53-349; R.S.1943, § 53-129; Laws 1978, LB 386, § 5; Laws 1980, LB 848, § 6; Laws 1983, LB 213, § 11; Laws 1988, LB 1089, § 12; Laws 1989, LB 781, § 8; Laws 1993, LB 183, § 10; Laws 1994, LB 1292, § 7; Laws 1999, LB 267, § 7; Laws 2004, LB 485, § 19; Laws 2007, LB549, § 10; Laws 2010, LB861, § 63; Laws 2016, LB1105, § 20; Laws 2018, LB1120, § 13; Laws 2020, LB1056, § 6; Laws 2022, LB1236, § 4.
Effective date July 21, 2022.

53-131.01 License; application; form; contents; criminal history record check; false statement; penalty.

(1) The application for a new license shall be submitted upon such forms as the commission may prescribe. Such forms shall contain (a) the name and residence of the applicant and how long he or she has resided within the State of Nebraska, (b) the particular premises for which a license is desired designating the same by street and number if practicable or, if not, by such other description as definitely locates the premises, (c) the name of the owner of the premises upon which the business licensed is to be carried on, (d) a statement that the applicant is a resident of Nebraska and legally able to work in Nebraska, that the applicant and the spouse of the applicant are not less than twenty-one years of age, and that such applicant has never been convicted of or pleaded guilty to a felony or been adjudged guilty of violating the laws governing the sale of alcoholic liquor or the law for the prevention of gambling in the State of Nebraska, except that a manager for a corporation applying for a license shall qualify with all provisions of this subdivision as though the manager were the applicant, except that the provisions of this subdivision shall not apply to the spouse of a manager-applicant, (e) a statement that the applicant intends to carry on the business authorized by the license for himself or herself and not as the agent of any other persons and that if licensed he or she will carry on such business for himself or herself and not as the agent for any other person, (f) a statement that the applicant intends to superintend in person the management of the business licensed and that if so licensed he or she will superintend in person the management of the business, and (g) such other information as the commission may from time to time direct. The applicant shall also submit two legible sets of fingerprints to be furnished to the Federal Bureau of Investigation through the Nebraska State Patrol for a national criminal history record check and the fee for such record check payable to the patrol.

(2) If any false statement is made in any part of such application, the applicant or applicants shall be deemed guilty of perjury, and upon conviction thereof the license shall be revoked and the applicant subjected to the penalties provided by law for that crime.

Source: Laws 1935, c. 116, § 99, p. 427; C.S.Supp.,1941, § 53-399; R.S.1943, § 53-142; Laws 1959, c. 249, § 13, p. 872; Laws 1979, LB 224, § 4; Laws 1980, LB 848, § 9; Laws 1991, LB 344, § 35; Laws 2003, LB 267, § 1; Laws 2016, LB1105, § 21; Laws 2022, LB1204, § 5.
Effective date July 21, 2022.

53-132 Retail, bottle club, craft brewery, or microdistillery license; commission; duties.

(1) If no hearing is required pursuant to subdivision (1)(a) or (b) of section 53-133 and the commission has no objections pursuant to subdivision (1)(c) of such section, the commission may waive the forty-five-day objection period and, if not otherwise prohibited by law, cause a retail license, bottle club license, craft brewery license, or microdistillery license to be signed by its chairperson, attested by its executive director over the seal of the commission, and issued in the manner provided in subsection (4) of this section as a matter of course.

(2) A retail license, bottle club license, craft brewery license, or microdistillery license may be issued to any qualified applicant if the commission finds that (a) the applicant is fit, willing, and able to properly provide the service proposed within the city, village, or county where the premises described in the application are located, (b) the applicant can conform to all provisions and requirements of and rules and regulations adopted pursuant to the Nebraska Liquor Control Act, (c) the applicant has demonstrated that the type of management and control to be exercised over the premises described in the application will be sufficient to insure that the licensed business can conform to all provisions and requirements of and rules and regulations adopted pursuant to the act, and (d) the issuance of the license is or will be required by the present or future public convenience and necessity.

(3) In making its determination pursuant to subsection (2) of this section the commission shall consider:

(a) The recommendation of the local governing body;

(b) The existence of a citizens' protest made in accordance with section 53-133;

(c) The existing population of the city, village, or county and its projected growth;

(d) The nature of the neighborhood or community of the location of the proposed licensed premises;

(e) The existence or absence of other retail licenses, bottle club licenses, craft brewery licenses, or microdistillery licenses with similar privileges within the neighborhood or community of the location of the proposed licensed premises and whether, as evidenced by substantive, corroborative documentation, the issuance of such license would result in or add to an undue concentration of licenses with similar privileges and, as a result, require the use of additional law enforcement resources;

(f) The existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises;

(g) The adequacy of existing law enforcement;

(h) Zoning restrictions;

(i) The sanitation or sanitary conditions on or about the proposed licensed premises; and

(j) Whether the type of business or activity proposed to be operated in conjunction with the proposed license is and will be consistent with the public interest.

(4) Retail licenses, bottle club licenses, craft brewery licenses, or microdistillery licenses issued or renewed by the commission shall be mailed or delivered electronically to:

(a) The clerk of the city, village, or county who shall deliver the same to the licensee upon receipt from the licensee of proof of payment of (i) the license fee if by the terms of subsection (6) of section 53-124 the fee is payable to the treasurer of such city, village, or county, (ii) any fee for publication of notice of hearing before the local governing body upon the application for the license, (iii) the fee for publication of notice of renewal as provided in section 53-135.01, and (iv) occupation taxes, if any, imposed by such city, village, or county except as otherwise provided in subsection (7) of this section; or

(b) The licensee, upon confirmation from the clerk of the city, village, or county that the necessary fees and taxes described in subdivision (4)(a) of this section have been received by the clerk of such city, village, or county.

(5) Notwithstanding any ordinance or charter power to the contrary, no city, village, or county shall impose an occupation tax on the business of any person, firm, or corporation licensed under the act and doing business within the corporate limits of such city or village or within the boundaries of such county in any sum which exceeds two times the amount of the license fee required to be paid under the act to obtain such license.

(6) Each license shall designate the name of the licensee, the place of business licensed, and the type of license issued.

(7) Class J retail licensees shall not be subject to occupation taxes under subsection (4) of this section.

Source: Laws 1935, c. 116, § 83, p. 419; C.S.Supp.,1941, § 53-383; R.S.1943, § 53-132; Laws 1957, c. 228, § 3, p. 780; Laws 1957, c. 242, § 45, p. 856; Laws 1959, c. 246, § 1, p. 845; Laws 1959, c. 247, § 2, p. 848; Laws 1959, c. 248, § 1, p. 857; Laws 1959, c. 249, § 7, p. 867; Laws 1976, LB 413, § 2; Laws 1981, LB 124, § 2; Laws 1984, LB 947, § 3; Laws 1986, LB 911, § 4; Laws 1988, LB 1089, § 14; Laws 1989, LB 780, § 9; Laws 1989, LB 781, § 10; Laws 1991, LB 344, § 36; Laws 1993, LB 183, § 12; Laws 1999, LB 267, § 9; Laws 2004, LB 485, § 21; Laws 2006, LB 845, § 2; Laws 2007, LB549, § 12; Laws 2010, LB861, § 66; Laws 2016, LB1105, § 22; Laws 2018, LB1120, § 15; Laws 2022, LB1204, § 6.
Effective date July 21, 2022.

53-135 Retail or bottle club licenses; automatic renewal; conditions.

A retail or bottle club license issued by the commission and outstanding may be automatically renewed by the commission without formal application upon payment of the renewal fee and license fee if payable to the commission prior to or within thirty days after the expiration of the license. The payment shall be an affirmative representation and certification by the licensee that all answers contained in an application, if submitted, would be the same in all material respects as the answers contained in the last previous application. The commission may at any time require a licensee to submit an application, and the commission shall at any time require a licensee to submit an application if requested in writing to do so by the local governing body.

If a licensee files an application form upon seeking renewal of his or her license, the application shall be processed as set forth in section 53-131.

Source: Laws 1935, c. 116, § 86, p. 421; C.S.Supp.,1941, § 53-386; R.S.1943, § 53-135; Laws 1959, c. 249, § 10, p. 870; Laws 1983, LB 213, § 15; Laws 1984, LB 820, § 1; Laws 1988, LB 1089, § 16; Laws 1991, LB 344, § 40; Laws 2004, LB 485, § 26; Laws 2010, LB861, § 69; Laws 2015, LB330, § 21; Laws 2016, LB1105, § 23; Laws 2018, LB1120, § 21; Laws 2022, LB1204, § 7.
Effective date July 21, 2022.

53-148.01 Retail or bottle club licensee; warning sign; commission; duties.

Any retail or bottle club licensee shall post in a conspicuous place a sign which clearly reads as follows: Warning: Drinking alcoholic beverages during pregnancy can cause birth defects. The commission shall prescribe the form of such warning sign and shall make such warning signs available to all retail and bottle club licensees. Warning signs may be provided electronically by the commission to the licensee.

Source: Laws 1989, LB 70, § 2; R.S.Supp.,1990, § 53-101.04; Laws 1991, LB 344, § 43; Laws 2018, LB1120, § 24; Laws 2022, LB1204, § 8.
Effective date July 21, 2022.

(i) PROHIBITED ACTS

53-169 Manufacturer or wholesaler; craft brewery, manufacturer, or microdistillery licensee; limitations.

(1) Except as provided in subsection (2) of this section, no manufacturer or wholesaler shall directly or indirectly: (a) Pay for any license to sell alcoholic liquor at retail or advance, furnish, lend, or give money for payment of such license; (b) purchase or become the owner of any note, mortgage, or other evidence of indebtedness of such licensee or any form of security therefor; (c) be interested in the ownership, conduct, or operation of the business of any licensee authorized to sell alcoholic liquor at retail; or (d) be interested directly or indirectly or as owner, part owner, lessee, or lessor thereof in any premises upon which alcoholic liquor is sold at retail.

(2) This section does not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 and the holder of a manufacturer's license shall have the privileges and duties listed in section 53-123.01 with respect to the manufacture, distribution, and retail sale of beer, and except as provided in subsection (2) of section 53-123.14, the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license or of a manufacturer's license issued pursuant to section 53-123.01 to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Source: Laws 1935, c. 116, § 30, p. 396; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-169; Laws 1947, c. 187, § 2, p. 619; Laws 1953, c. 182, § 3, p. 574; Laws 1961, c. 258, § 5, p. 765; Laws 1971, LB 751, § 5; Laws 1981, LB 483, § 3; Laws 1985, LB 183, § 5; Laws 1985, LB 279, § 11; Laws 1988, LB 1089, § 24; Laws 1991, LB 344, § 54; Laws 1996, LB 750, § 11; Laws 2007, LB549, § 17; Laws 2016, LB1105, § 25; Laws 2022, LB1236, § 5.
Effective date July 21, 2022.

53-171 Licenses; issuance of more than one kind to same person; when unlawful; craft brewery, manufacturer, or microdistillery licensee; limitations.

No person licensed as a wholesaler of alcoholic liquor shall be permitted to receive any retail license at the same time. No person licensed as a manufactur-

er shall be permitted to receive any retail license at the same time except as set forth in subsection (2) of section 53-123.01 with respect to the manufacture, distribution, and retail sale of beer, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a manufacturer's license issued pursuant to such subsection to engage in the wholesale distribution of alcoholic liquor. No person licensed as a retailer of alcoholic liquor shall be permitted to receive any manufacturer's or wholesale license at the same time. This section shall not apply to the holder of a farm winery license. The holder of a craft brewery license shall have the privileges and duties listed in section 53-123.14 with respect to the manufacture, distribution, and retail sale of beer, and except as provided in subsection (2) of section 53-123.14, the Nebraska Liquor Control Act shall not be construed to permit the holder of a craft brewery license to engage in the wholesale distribution of beer. The holder of a microdistillery license shall have the privileges and duties listed in section 53-123.16 with respect to the manufacture of alcoholic liquor, and the Nebraska Liquor Control Act shall not be construed to permit the holder of a microdistillery license to engage in the wholesale distribution of alcoholic liquor.

Source: Laws 1935, c. 116, § 30, p. 397; C.S.Supp.,1941, § 53-330; R.S.1943, § 53-171; Laws 1953, c. 182, § 1, p. 573; Laws 1969, c. 441, § 4, p. 1478; Laws 1985, LB 279, § 12; Laws 1988, LB 1089, § 25; Laws 1991, LB 344, § 56; Laws 1996, LB 750, § 12; Laws 2007, LB549, § 18; Laws 2016, LB1105, § 26; Laws 2022, LB1236, § 6.
Effective date July 21, 2022.

53-180.04 Minors; warning notice; posting.

(1) Every licensee of a place where alcoholic liquor is sold at retail shall display at all times in a prominent place 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, which shall read as follows:

WARNING TO PERSONS UNDER 21
YOU ARE SUBJECT TO
NOTIFICATION OF PARENTS OR GUARDIAN
AND
YOU ARE SUBJECT TO A PENALTY OF UP TO
$500 FINE
3 MONTHS IN JAIL
OR BOTH IF YOU ARE UNDER 21 AND YOU CONSUME,
PURCHASE, ATTEMPT TO PURCHASE,
OR HAVE IN YOUR POSSESSION
ALCOHOLIC LIQUOR IN THIS ESTABLISHMENT
AND
WARNING TO ADULTS
YOU ARE SUBJECT TO A PENALTY OF UP TO
$1000 FINE
1 YEAR IN JAIL
OR BOTH
IF YOU ARE 21 OR OVER AND YOU PURCHASE
ALCOHOLIC LIQUOR
FOR A PERSON UNDER 21
AND

WARNING TO PURCHASERS OF BEER KEGS
PROPER IDENTIFICATION AND PURCHASER'S SIGNATURE
ARE REQUIRED
LAWS OF THE STATE OF NEBRASKA

(2) Such warning sign may be provided electronically by the commission to the licensee.

Source: Laws 1951, c. 174, § 1(5), p. 664; Laws 1963, c. 313, § 1, p. 943; Laws 1969, c. 440, § 3, p. 1474; Laws 1980, LB 221, § 4; Laws 1980, LB 848, § 19; Laws 1984, LB 56, § 3; Laws 1985, LB 493, § 1; Laws 1993, LB 332, § 7; Laws 2001, LB 114, § 5; Laws 2022, LB1204, § 9.
Effective date July 21, 2022.

53-180.05 Prohibited acts relating to minors and incompetents; violations; penalties; possible alcohol overdose; actions authorized; false identification; penalty; law enforcement agency; duties.

(1) Except as provided in subsection (2) of this section, any person who violates section 53-180 shall be guilty of a Class I misdemeanor.

(2) Any person who knowingly and intentionally violates section 53-180 shall be guilty of a Class IIIA felony and serve a mandatory minimum of at least thirty days' imprisonment as part of any sentence he or she receives if serious bodily injury or death to any person resulted and was proximately caused by a minor's (a) consumption of the alcoholic liquor provided or (b) impaired condition which, in whole or in part, can be attributed to the alcoholic liquor provided.

(3) Any person who violates any of the provisions of section 53-180.01 or 53-180.03 shall be guilty of a Class III misdemeanor.

(4)(a) Except as otherwise provided in subdivisions (b), (c), and (d) of this subsection or section 28-1701, any person older than eighteen years of age and under the age of twenty-one years violating section 53-180.02 is guilty of a Class III misdemeanor.

(b) Subdivision (a) of this subsection shall not apply if the person:

(i) Made a good faith request for emergency medical assistance in response to the possible alcohol overdose of himself or herself or another person as soon as the emergency situation is apparent after such violation of section 53-180.02;

(ii) Made the request for medical assistance under subdivision (b)(i) of this subsection as soon as the emergency situation is apparent after such violation of section 53-180.02; and

(iii) When emergency medical assistance was requested for the possible alcohol overdose of another person:

(A) Remained on the scene until the medical assistance arrived; and

(B) Cooperated with medical assistance and law enforcement personnel.

(c) The exception from criminal liability provided in subdivision (b) of this subsection applies to any person who makes a request for emergency medical assistance and complies with the requirements of subdivision (b) of this subsection.

(d) Subdivision (a) of this subsection shall not apply to the person experiencing a possible alcohol overdose if a request for emergency medical assistance in

response to such possible alcohol overdose was made by another person in compliance with subdivision (b) of this subsection.

(e) A person shall not initiate or maintain an action against a peace officer or the employing state agency or political subdivision based on the officer's compliance with subdivision (b), (c), or (d) of this subsection.

(5) Any person eighteen years of age or younger violating section 53-180.02 is guilty of a misdemeanor as provided in section 53-181 and shall be punished as provided in such section.

(6) Any person who knowingly manufactures, creates, or alters any form of identification for the purpose of sale or delivery of such form of identification to a person under the age of twenty-one years shall be guilty of a Class I misdemeanor. For purposes of this subsection, form of identification means any card, paper, or legal document that may be used to establish the age of the person named thereon for the purpose of purchasing alcoholic liquor.

(7) When a minor is arrested for a violation of sections 53-180 to 53-180.02 or subsection (6) of this section, the law enforcement agency employing the arresting peace officer shall make a reasonable attempt to notify such minor's parent or guardian of the arrest.

Source: Laws 1935, c. 116, § 38, p. 400; Laws 1937, c. 125, § 1, p. 437; C.S.Supp.,1941, § 53-338; Laws 1943, c. 121, § 1, p. 419; R.S. 1943, § 53-180; Laws 1951, c. 174, § 1(6), p. 664; Laws 1963, c. 313, § 2, p. 943; Laws 1969, c. 444, § 1, p. 1482; Laws 1973, LB 25, § 3; Laws 1977, LB 40, § 315; Laws 1982, LB 869, § 1; Laws 1984, LB 56, § 4; Laws 1985, LB 493, § 2; Laws 1989, LB 440, § 1; Laws 1991, LB 454, § 1; Laws 2001, LB 114, § 6; Laws 2010, LB258, § 2; Laws 2011, LB667, § 22; Laws 2015, LB439, § 1; Laws 2018, LB923, § 2; Laws 2022, LB519, § 6.
Effective date July 21, 2022.

CHAPTER 54
LIVESTOCK

Article.
29. Animal Health and Disease Control Act. 54-2940, 54-2946.

ARTICLE 29
ANIMAL HEALTH AND DISEASE CONTROL ACT

Section
54-2940. Animal Health and Disease Control Act and Exotic Animal Auction or Exchange Venue Act; department; powers.
54-2946. Dead animal; proper disposal; what constitutes; effect; owner or custodian; duties; sheriff; powers and duties; suspicion of anthrax; owner or custodian; duties; acts prohibited; department powers.

54-2940 Animal Health and Disease Control Act and Exotic Animal Auction or Exchange Venue Act; department; powers.

In carrying out its duties to prevent, suppress, control, and eradicate dangerous diseases the department may:

(1) Issue quarantines to any person or public or private premises within the state where an affected animal, suspected affected animal, or regulated article is or was located, and upon any animal imported into Nebraska in violation of the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, and any importation rules or regulations until such quarantine is released by the State Veterinarian. Whenever additional animals are placed within a quarantined premises or area, such quarantine may be amended accordingly by the department. Births and death loss shall be included on inventory documentation pursuant to the quarantine;

(2) Regulate or prohibit animal or regulated article movement into, within, or through the state through quarantines, controlled movement orders, importation orders, or embargoes as deemed necessary by the State Veterinarian;

(3) Require an affected animal or suspected affected animal to be (a) euthanized, detained, slaughtered, or sold for immediate slaughter at a federally inspected slaughter establishment or (b) inspected, tested, treated, subjected to an epidemiological investigation, monitored, or vaccinated. The department may require tested animals to be identified by an official identification eartag. Costs for confinement, restraint, and furnishing the necessary assistance and facilities for such activities shall be the responsibility of the owner or custodian of the animal;

(4) Seek an emergency proclamation by the Governor in accordance with section 81-829.40 when deemed appropriate. All state agencies and political subdivisions of the state shall cooperate with the implementation of any emergency procedures and measures developed pursuant to such proclamation;

(5)(a) Access records or animals and enter any premises related to the purposes of the Animal Health and Disease Control Act or the Exotic Animal

Auction or Exchange Venue Act without being subject to any action for trespass or reasonable damages if reasonable care is exercised; and

(b) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 if any person refuses to allow the department access or entry as authorized under this subdivision;

(6) Adopt and promulgate rules and regulations to enforce and effectuate the general purpose and provisions of the Animal Health and Disease Control Act, the Exotic Animal Auction or Exchange Venue Act, and any other provisions the department deems necessary for carrying out its duties under such acts including:

(a) Standards for program diseases to align with USDA/APHIS/VS program standards;

(b) Provisions for maintaining a livestock disease reporting system;

(c) Procedures for establishing and maintaining accredited, certified, validated, or designated disease-free animals, herds, or flocks;

(d) In consultation with the Department of Environment and Energy and the Department of Health and Human Services, best management practices for the disposal of carcasses of dead livestock;

(e) In consultation with the Department of Environment and Energy and the University of Nebraska, operating procedures governing composting of livestock carcasses;

(f) Recommendations of where and how any available federal funds and state personnel and materials are to be allocated for the purpose of program disease activities; and

(g) Provisions for secure food supply plans to ensure the continuity of business is maintained during a foreign animal or transboundary disease outbreak;

(7) When funds are available, develop a livestock emergency response system capable of coordinating and executing a rapid response to the incursion or potential incursion of a dangerous livestock disease episode which poses a threat to the health of the state's livestock and could cause a serious economic impact on the state, international trade, or both;

(8) When funds are available, support planning for and assistance with catastrophic livestock mortality disposal, including the acquisition of equipment and supplies and securing of services, to augment preparedness for and response to a disease, natural disaster, or other emergency event resulting in catastrophic livestock mortality or euthanization;

(9) Allow animals intended for direct slaughter to move to a controlled feedlot for qualified purposes; and

(10) Approve qualified commuter herd agreements and livestock producer plans and, when appropriate, allow for exceptions to requirements by written compliance agreements.

Source: Laws 2020, LB344, § 40; Laws 2022, LB848, § 1.
Effective date July 21, 2022.

Cross References

Exotic Animal Auction or Exchange Venue Act, see section 54-7,105.

54-2946 Dead animal; proper disposal; what constitutes; effect; owner or custodian; duties; sheriff; powers and duties; suspicion of anthrax; owner or custodian; duties; acts prohibited; department powers.

(1) It is the duty of the owner or custodian of any dead animal to properly dispose of the animal within thirty-six hours after receiving knowledge of the animal's death unless a different timeframe is established in a herd or flock management plan or otherwise allowed by the State Veterinarian. Proper disposal of a dead animal is limited to:

(a) Burial on the premises where such animal died or on any adjacent property under the control of the animal's owner or custodian and coverage to a depth of at least four feet below the surface of the ground except as required in subsection (7) of this section;

(b) Complete incineration;

(c) Composting on the premises where such animal died or on an adjacent property under the ownership and control of the owner or custodian;

(d) Alkaline hydrolysis tissue digestion by a veterinary clinic or laboratory;

(e) Transportation by a licensed rendering establishment or other hauler approved by the State Veterinarian;

(f) Transportation to a veterinary clinic or laboratory for purposes of diagnostic testing; or

(g) Transportation with written permission of the State Veterinarian:

(i) To a rendering establishment licensed under the Nebraska Meat and Poultry Inspection Law;

(ii) To a compost site approved by the State Veterinarian;

(iii) To a facility with a permit to operate as a landfill under the Integrated Solid Waste Management Act so long as the operator of the landfill agrees to accept the dead animal;

(iv) To any facility which lawfully disposes of dead animals;

(v) As specified in a herd or flock management plan; or

(vi) In the event of a disease, natural disaster, or other emergency event resulting in catastrophic livestock mortality or euthanization, to a location designated by a county or other local emergency management organization.

(2) A dead animal properly disposed of pursuant to this section is exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.

(3) Any vehicle used by the owner or custodian to transport a dead animal shall be constructed in such a manner that the contents are covered and will not fall, leak, or spill from the vehicle. Violation of this subsection is a traffic infraction as defined in section 60-672.

(4) It is hereby made the duty of the sheriff of each county to cause the proper disposal of the carcass of any animal or carcass part remaining unburied or otherwise disposed of after notice from the department that any such carcass has not been properly buried or disposed of in violation of this section. The sheriff may enter any premises where any such carcass is located for the purpose of carrying out this section and may cause each carcass to be properly buried or disposed of on such premises. The county board of commissioners or supervisors shall allow such sums for the services as it may deem

reasonable, and such sums shall be paid to the persons rendering the services upon vouchers as other claims against the county are paid. The owner of such animal shall be liable to the county for the expense of such burial or disposal, to be recovered in a civil action, unless the owner pays such expenses within thirty days after notice and demand therefor.

(5) If anthrax is suspected in any animal death, the owner or custodian of the animal or herd shall be responsible to have samples submitted to an approved laboratory for confirmation.

(6) If an animal has or is suspected to have died of anthrax, it shall be unlawful to:

(a) Transport such animal or animal carcass, except as directed and approved by the department;

(b) Use the flesh or organs of such animal or animal carcass for food for livestock or human consumption; or

(c) Remove the skin or hide of such animal or animal carcass.

(7) The disposition of any anthrax-infected animal carcass shall be carried out under the direction of the department. It shall be the duty of the owner or custodian of an animal that has died of anthrax to bury or burn the carcass on the premises where the carcass is found, unless directed otherwise by the State Veterinarian. If such carcass is buried, no portion of the carcass shall be interred closer than six feet from the surface of the ground. The department may direct the owner or custodian of an infected herd to treat the herd and to clean and disinfect the premises in accordance with the herd plan.

Source: Laws 2020, LB344, § 46; Laws 2022, LB848, § 2.
Effective date July 21, 2022.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.
Nebraska Meat and Poultry Inspection Law, see section 54-1901.

CHAPTER 55
MILITIA

Article.
1. Military Code. 55-182.
9. Military Base Development and Support. 55-901.

ARTICLE 1
MILITARY CODE

Section
55-182. Nebraska National Guard; rights.

55-182 Nebraska National Guard; rights.

The rights of a member of the Nebraska National Guard in the State of Nebraska shall include, but not be limited to, the right to:

(1) Seek employment with state, county, and local government;

(2) Not have membership in the Nebraska National Guard impact such member's right to donate to political parties when not on duty status;

(3) Participate with state, county, or local government in a law enforcement function as prescribed by that government;

(4) Receive the same protections a law enforcement officer is afforded under section 23-3211 if the member is acting as a law enforcement officer pursuant to subdivision (3) of this section; and

(5) Protection of such member's personal information as afforded personnel of public bodies pursuant to subdivision (8) of section 84-712.05, if the member is acting as a law enforcement officer pursuant to subdivision (3) of this section.

Source: Laws 2019, LB152, § 1; Laws 2022, LB1246, § 3.
Effective date July 21, 2022.

ARTICLE 9
MILITARY BASE DEVELOPMENT AND SUPPORT

Section
55-901. Military Base Development and Support Fund; created; use; investment; matching funds.

55-901 Military Base Development and Support Fund; created; use; investment; matching funds.

(1) The Military Base Development and Support Fund is created. The fund shall be used to contribute to construction, development, or support on any military base, located in Nebraska, for purposes of improving mission retention and recruitment; supporting the morale, health, and mental wellness of military members and families; and growing the economic impact of military bases in Nebraska. The Department of Veterans' Affairs shall administer the fund. The fund shall consist of transfers authorized by the Legislature and any gifts,

grants, or bequests from any source, including federal, state, public, and private sources, for such purposes. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund may be used for projects on military bases located in Nebraska, including, but not limited to:

(a) An outdoor airman amenity pavilion;

(b) Track and field stadium improvements;

(c) A parade-ground walking trail;

(d) Improvements at Willow Lakes Golf Course;

(e) Base Lake improvements;

(f) Landscape enhancements;

(g) Deterrence Park;

(h) Looking Glass Heritage Park;

(i) Quarters 13 comprehensive repairs, design, and construction; and

(j) B1000 Rooftop Garden.

(3) The Department of Veterans' Affairs shall require a match of private funding in an amount equal to or greater than one-half of the total cost of any project listed in subsection (2) of this section prior to authorizing an expenditure from the fund.

Source: Laws 2022, LB1012, § 5.
Effective date April 5, 2022.

Cross References

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

CHAPTER 58
MONEY AND FINANCING

Article.
2. Nebraska Investment Finance Authority. 58-210.02 to 58-251.
6. Nebraska Uniform Prudent Management of Institutional Funds Act. 58-615.

ARTICLE 2
NEBRASKA INVESTMENT FINANCE AUTHORITY

Section
58-210.02. Economic-impact project, defined.
58-219. Project, defined.
58-220. Rental housing, defined.
58-221. Residential energy conservation device, defined.
58-222. Residential housing, defined.
58-239. Authority; powers; enumerated.
58-251. Authority; development project; make specific findings.

58-210.02 Economic-impact project, defined.

(1) Economic-impact project means:

(a) Any of the following, whether or not in existence, financed in whole or in part through the use of the federal new markets tax credit described in section 45D of the Internal Revenue Code, and located in a low-income community designated pursuant to section 45D of the Internal Revenue Code or designated by the Department of Economic Development:

(i) Any land, building, or other improvement, including, but not limited to, infrastructure;

(ii) Any real or personal property;

(iii) Any equipment; or

(iv) Any undivided or other interest in any property described in subdivision (1)(a)(i), (1)(a)(ii), or (1)(a)(iii) of this section; or

(b) Any of the following, whether or not in existence, which constitutes a qualified opportunity zone business located in one or more certified qualified opportunity zones which is financed in whole or in part through one or more investments acquired by one or more qualified opportunity funds as authorized pursuant to the federal Tax Cuts and Jobs Act, Public Law 115-97:

(i) Any land, building, or other improvement, including, but not limited to, infrastructure;

(ii) Any real or personal property;

(iii) Any equipment; or

(iv) Any undivided or other interest in any property described in subdivision (1)(b)(i), (1)(b)(ii), or (1)(b)(iii) of this section.

(2) Economic-impact project does not include any operating capital.

Source: Laws 2006, LB 693, § 5; Laws 2022, LB707, § 35.
Operative date July 21, 2022.

58-219 Project, defined.

Project shall mean one or more of the following:

(1)(a) Rental housing;

(b) Residential housing; and

(c) Residential energy conservation devices;

(2) Agriculture or agricultural enterprise;

(3) Any land, building, or other improvement, any real or personal property, or any equipment and any undivided or other interest in any of the foregoing, whether or not in existence, suitable or used for or in connection with any of the following revenue-producing enterprises or two or more such enterprises engaged or to be engaged in:

(a) In all areas of the state, manufacturing or industrial enterprises, including assembling, fabricating, mixing, processing, warehousing, distributing, or transporting any products of agriculture, forestry, mining, industry, or manufacturing; pollution control facilities; and facilities incident to the development of industrial sites, including land costs and the costs of site improvements such as drainage, water, storm, and sanitary sewers, grading, streets, and other facilities and structures incidental to the use of such sites for manufacturing or industrial enterprises;

(b) In all areas of the state, service enterprises if (i) such facilities constitute new construction or rehabilitation, including hotels or motels, sports and recreation facilities available for use by members of the general public either as participants or spectators, and convention or trade show facilities, (ii) such facilities do not or will not derive a significant portion of their gross receipts from retail sales or utilize a significant portion of their total area for retail sales, and (iii) such facilities are owned or to be owned by a nonprofit entity or a public agency;

(c) In blighted areas of the state, service and business enterprises if such facilities constitute new construction, acquisition, or rehabilitation, including, but not limited to, those enterprises specified in subdivision (3)(b) of this section, office buildings, and retail businesses if such facilities are owned or to be owned by a nonprofit entity or a public agency; and

(d) In all areas of the state, any land, building, or other improvement and all real or personal property, including furniture and equipment, and any undivided or other interest in any such property, whether or not in existence, suitable or used for or in connection with any hospital, nursing home, nonprofit child care facility, or facilities related and subordinate thereto.

Nothing in this subdivision shall be construed to include any rental or residential housing, residential energy conservation device, or agriculture or agricultural enterprise;

(4) Any land, building, or other improvement, any real or personal property, or any equipment and any undivided or other interest in any of the foregoing, whether or not in existence, used by a nonprofit entity as an office building, but only if (a) the principal long-term occupant or occupants thereof initially employ at least fifty people, (b) the office building will be used by the principal long-term occupant or occupants as a national, regional, or divisional office, (c) the principal long-term occupant or occupants are engaged in a multistate

operation, and (d) the authority makes the findings specified in subdivision (1) of section 58-251;

(5) Wastewater treatment or safe drinking water project which shall include any project or undertaking which involves the construction, development, rehabilitation, and improvement of wastewater treatment facilities or safe drinking water facilities and is financed by a loan from or otherwise provided financial assistance by the Wastewater Treatment Facilities Construction Loan Fund or any comparable state fund providing money for the financing of safe drinking water facilities;

(6) Any cost necessary for abatement of an environmental hazard or hazards in school buildings or on school grounds upon a determination by the school that an actual or potential environmental hazard exists in the school buildings or on the school grounds under its control;

(7) Any accessibility barrier elimination project costs necessary for accessibility barrier elimination in school buildings or on school grounds upon a determination by the school that an actual or potential accessibility barrier exists in the school buildings or on the school grounds under its control;

(8) Solid waste disposal project which shall include land, buildings, equipment, and improvements consisting of all or part of an area or a facility for the disposal of solid waste, including recycling of waste materials, either publicly or privately owned or operated, and any project or program undertaken by a county, city, village, or entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act for closure, monitoring, or remediation of an existing solid waste disposal area or facility and any undivided or other interest in any of the foregoing;

(9) Any affordable housing infrastructure which shall include streets, sewers, storm drains, water, broadband, electrical and other utilities, sidewalks, public parks, public playgrounds, public swimming pools, public recreational facilities, and other community facilities, easements, and similar use rights thereof, as well as improvements preparatory to the development of housing units;

(10) Any public safety communication project, including land, buildings, equipment, easements, licenses, and leasehold interests, and any undivided or other interest in any of the foregoing, held for or on behalf of any public safety communication system owned or operated by (a) a joint entity providing public safety communications and created pursuant to the Interlocal Cooperation Act or (b) a joint public agency providing public safety communications and created pursuant to the Joint Public Agency Act; and

(11) Economic-impact projects.

Source: Laws 1983, LB 626, § 19; Laws 1984, LB 372, § 10; Laws 1984, LB 1084, § 5; Laws 1989, LB 311, § 5; Laws 1989, LB 706, § 7; Laws 1991, LB 253, § 22; Laws 1992, LB 1001, § 9; Laws 1992, LB 1257, § 69; Laws 1996, LB 1322, § 6; Laws 1999, LB 87, § 78; Laws 2002, LB 1211, § 6; Laws 2006, LB 693, § 6; Laws 2022, LB707, § 36.
Operative date July 21, 2022.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

58-220 Rental housing, defined.

Rental housing shall mean a specific work or improvement within this state undertaken primarily to provide rental dwelling accommodations for low-income or moderate-income persons, which work or improvement shall include the acquisition, construction, reconstruction, or rehabilitation of land, buildings, and improvements thereto and such other nonhousing facilities, including commercial facilities, as may be appurtenant thereto so long as the cost of such nonhousing facilities does not exceed twenty percent of the total cost of the rental housing.

Source: Laws 1983, LB 626, § 20; Laws 1991, LB 253, § 23; Laws 2022, LB707, § 37.
Operative date July 21, 2022.

58-221 Residential energy conservation device, defined.

Residential energy conservation device shall mean any prudent means of reducing the demands for conventional fuels or increasing the supply or efficiency of these fuels in residential housing and shall include, but not be limited to:

(1) Caulking and weather stripping of doors and windows;

(2) Furnace efficiency modifications, including:

(a) Replacement burners, furnaces, heat pumps, or boilers or any combination thereof which, as determined by the Director of Environment and Energy, substantially increases the energy efficiency of the heating system;

(b) Any device for modifying flue openings which will increase the energy efficiency of the heating system; and

(c) Any electrical or mechanical furnace ignition system which replaces a standing gas pilot light;

(3) A clock thermostat;

(4) Ceiling, attic, wall, and floor insulation;

(5) Water heater insulation;

(6) Storm windows and doors, multiglazed windows and doors, and heat-absorbed or heat-reflective glazed window and door materials;

(7) Any device which controls demand of appliances and aids load management;

(8) Any device to utilize solar energy, biomass, geothermal, or wind power for any residential energy conservation purpose including heating of water and space heating or cooling; and

(9) Any other conservation device, renewable energy technology, and specific home improvement necessary to insure the effectiveness of the energy conservation measures as the Director of Environment and Energy by rule or regulation identifies.

Source: Laws 1983, LB 626, § 21; Laws 1991, LB 253, § 24; Laws 2019, LB302, § 64; Laws 2022, LB707, § 38.
Operative date July 21, 2022.

58-222 Residential housing, defined.

Residential housing shall mean a specific work or improvement within this state undertaken primarily to provide owner-occupied dwelling accommodations for low-income and moderate-income persons, which work or improvement shall include the acquisition, construction, reconstruction, or rehabilitation of land, buildings, and improvements thereto, including residential energy conservation devices, and such other nonhousing facilities, including commercial facilities, as may be appurtenant thereto so long as the cost of such nonhousing facilities does not exceed twenty percent of the total cost of the residential housing.

Source: Laws 1983, LB 626, § 22; Laws 1991, LB 253, § 25; Laws 2022, LB707, § 39.
Operative date July 21, 2022.

58-239 Authority; powers; enumerated.

The authority is hereby granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes including:

(1) To have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions;

(2) To adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with the Nebraska Investment Finance Authority Act, to regulate its affairs, to carry into effect the powers and purposes of the authority, and to conduct its business;

(3) To sue and be sued in its own name;

(4) To have an official seal and alter it at will;

(5) To maintain an office at such place or places within the state as it may designate;

(6) To make and execute contracts and all other instruments as necessary or convenient for the performance of its duties and the exercise of its powers and functions under the act;

(7) To employ architects, engineers, attorneys, inspectors, accountants, building contractors, financial experts, and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation;

(8) To obtain insurance against any loss in connection with its bonds, property, and other assets in such amounts and from such insurers as it deems advisable;

(9) To borrow money and issue bonds as provided by the act;

(10) To receive and accept from any source aid or contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of the act subject to the conditions upon which the grants or contributions are made including gifts or grants from any department, agency, or instrumentality of the United States, and to make grants, for any purpose consistent with the act;

(11) To enter into agreements with any department, agency, or instrumentality of the United States or this state and with lenders for the purpose of carrying out projects authorized under the act;

(12) To enter into contracts or agreements with lenders for the servicing and processing of mortgages or loans pursuant to the act;

(13) To provide technical assistance to local public bodies and to for-profit and nonprofit entities in the areas of housing for low-income and moderate-income persons, agricultural enterprises, and community or economic development, to distribute data and information concerning the needs of the state in these areas, and, at the discretion of the authority, to charge reasonable fees for such assistance;

(14) To the extent permitted under its contract with the holders of bonds of the authority, to consent to any modification with respect to the rate of interest, time, and payment of any installment of principal or interest or any other term of any contract, loan, loan note, loan note commitment, mortgage, mortgage loan, mortgage loan commitment, lease, or agreement of any kind to which the authority is a party;

(15) To the extent permitted under its contract with the holders of bonds of the authority, to enter into contracts with any lender containing provisions enabling it to reduce the rental or carrying charges to persons unable to pay the regular schedule of charges when, by reason of other income or payment by any department, agency, or instrumentality of the United States of America or of the state, the reduction can be made without jeopardizing the economic stability of the project being financed;

(16) To acquire by construction, purchase, devise, gift, or lease or any one or more of such methods one or more projects located within this state, except that the authority shall not acquire any projects or parts of such projects by condemnation;

(17) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the authority may deem advisable and as are not in conflict with the act;

(18) To issue bonds for the purpose of paying the cost of financing any project or projects and to secure the payment of such bonds as provided in the act;

(19) To sell and convey any real or personal property and make such order respecting the same as it deems conducive to the best interest of the authority;

(20) To make and undertake commitments to make loans to lenders under the terms and conditions requiring the proceeds of the loans to be used by such lenders to make loans for projects. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker, or other financial institution authorized to transact business in the state;

(21) To hold and dispose of any real or personal property, whether tangible or intangible, and any distributions thereon, transferred to or received by the authority as collateral or in payment of amounts due the authority or otherwise pursuant to state law, in accordance with the act;

(22) To invest in, purchase, make commitments to invest in or purchase, and take assignments or make commitments to take assignments of loans made by lenders for the construction, rehabilitation, or purchase of projects;

(23) To enter into financing agreements with others with respect to projects to provide financing for such projects upon such terms and conditions as the authority deems advisable to effectuate the public purposes of the act, which projects shall be located within the state;

(24) To enter into financing agreements with any corporation, partnership, limited liability company, or individual or with any county, city, village, or

entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act for purposes of financing any solid waste disposal project;

(25) To enter into agreements with or purchase or guaranty obligations of political subdivisions of the state, including authorities, agencies, commissions, districts, and instrumentalities thereof, to provide financing for affordable housing infrastructure and to enter into financing agreements with private parties for the purpose of financing infrastructure in connection with the development of affordable housing; and

(26) In lieu of providing direct financing as authorized by the Nebraska Investment Finance Authority Act, to guaranty debt obligations of any project owner to whom, and for such purposes as, the authority could otherwise provide direct financing, and the authority may establish a fund or account and limit its obligation on such guaranties to money in such fund or account. Any such guaranty shall contain a statement similar to that required by section 58-255 for bonds issued by the authority.

Source: Laws 1983, LB 626, § 39; Laws 1986, LB 1230, § 30; Laws 1991, LB 253, § 40; Laws 1992, LB 1257, § 70; Laws 1993, LB 121, § 355; Laws 1993, LB 364, § 21; Laws 1996, LB 1322, § 8; Laws 1999, LB 87, § 79; Laws 2001, LB 300, § 8; Laws 2022, LB707, § 40.
Operative date July 21, 2022.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

58-251 Authority; development project; make specific findings.

Prior to providing financing for a development project as defined by subdivision (3) of section 58-219, the authority shall make specific findings relating to the public purposes to be effectuated thereby, including but not limited to (1) with respect to a project as defined in subdivision (3)(a), (3)(b), or (3)(c) of section 58-219, the project's effect on the economic base, the tax base, tax revenue, and employment opportunities, and (2) with respect to a project as defined in subdivision (3)(d) of section 58-219, the project's effect on the provision, including the continued provision, of health care, child care, and related services.

Source: Laws 1983, LB 626, § 51; Laws 2022, LB707, § 41.
Operative date July 21, 2022.

ARTICLE 6

NEBRASKA UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

Section
58-615. Release or modification of restrictions on management, investment, or purpose.

58-615 Release or modification of restrictions on management, investment, or purpose.

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the manage-

ment, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(1) the institutional fund subject to the restriction has a total value of less than one hundred thousand dollars;

(2) more than twenty years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

Source: Laws 2007, LB136, § 6; Laws 2022, LB795, § 1.
Effective date July 21, 2022.

CHAPTER 59
MONOPOLIES AND UNLAWFUL RESTRAINT OF TRADE

ARTICLE 17
SELLER-ASSISTED MARKETING PLAN

59-1722 Transaction involving the sale of a franchise; exempt; exception; conditions; fee.

(1) Any transaction involving the sale of a franchise as defined in 16 C.F.R. 436.1(h), as such regulation existed on January 1, 2022, shall be exempt from the Seller-Assisted Marketing Plan Act, except that such transactions shall be subject to subdivision (1)(d) of section 59-1757, those provisions regulating or prescribing the use of the phrase buy-back or secured investment or similar phrases as set forth in sections 59-1726 to 59-1728 and 59-1751, and all sections which provide for their enforcement. The exemption shall only apply if:

(a) The franchise is offered and sold in compliance with the requirements of 16 C.F.R. part 436, Disclosure Requirements and Prohibitions Concerning Franchising, as such part existed on January 1, 2022;

(b) Before placing any advertisement in a Nebraska-based publication, offering for sale to any prospective purchaser in Nebraska, or making any representations in connection with such offer or sale to any prospective purchaser in Nebraska, the seller files a notice with the Department of Banking and Finance which contains (i) the name, address, and telephone number of the seller and the name under which the seller intends to do business and (ii) a brief description of the plan offered by the seller; and

(c) The seller pays a filing fee of one hundred dollars.

(2) The department may request a copy of the disclosure document upon receipt of a written complaint or inquiry regarding the seller or upon a reasonable belief that a violation of the Seller-Assisted Marketing Plan Act has occurred or may occur. The seller shall provide such copy within ten business days of receipt of the request.

(3) All funds collected by the department under this section shall be remitted to the State Treasurer for credit to the Securities Act Cash Fund.

(4) The Director of Banking and Finance may by order deny or revoke an exemption specified in this section with respect to a particular offering of one or more business opportunities if the director finds that such an order is in the public interest or is necessary for the protection of purchasers. An order shall not be entered without appropriate prior notice to all interested parties, an

opportunity for hearing, and written findings of fact and conclusions of law. If the public interest or the protection of purchasers so requires, the director may by order summarily deny or revoke an exemption specified in this section pending final determination of any proceedings under this section. An order under this section shall not operate retroactively.

Source: Laws 1979, LB 180, § 22; Laws 1993, LB 218, § 9; Laws 2001, LB 53, § 108; Laws 2013, LB214, § 11; Laws 2020, LB909, § 47; Laws 2021, LB363, § 29; Laws 2022, LB707, § 42.
Operative date April 19, 2022.

CHAPTER 60
MOTOR VEHICLES

Article.
1. Motor Vehicle Certificate of Title Act. 60-107 to 60-169.
3. Motor Vehicle Registration. 60-302.01 to 60-3,253.
4. Motor Vehicle Operators' Licenses.
   (e) General Provisions. 60-462 to 60-470.03.
   (f) Provisions Applicable to All Operators' Licenses. 60-479.01 to 60-4,111.01.
   (g) Provisions Applicable to Operation of Motor Vehicles Other than Commercial. 60-4,115 to 60-4,130.04.
   (h) Provisions Applicable to Operation of Commercial Motor Vehicles. 60-4,132 to 60-4,168.
   (i) Commercial Driver Training Schools. 60-4,174.
   (k) Point System. 60-4,183, 60-4,188.
5. Motor Vehicle Safety Responsibility.
   (a) Definitions. 60-501.
6. Nebraska Rules of the Road.
   (a) General Provisions. 60-628.01.
   (d) Accidents and Accident Reporting. 60-699.
   (u) Occupant Protection Systems and Three-point Safety Belt Systems. 60-6,265.
14. Motor Vehicle Industry Licensing. 60-1403 to 60-1435.
15. Department of Motor Vehicles. 60-1515.
27. Manufacturer's Warranty Duties. 60-2705.
29. Uniform Motor Vehicle Records Disclosure Act. 60-2909.01.

ARTICLE 1
MOTOR VEHICLE CERTIFICATE OF TITLE ACT

Section
60-107. Cabin trailer, defined.
60-119.01. Low-speed vehicle, defined.
60-142.11. Assembled vehicle; application for certificate of title; procedure.
60-144. Certificate of title; issuance; filing; application; contents; form.
60-146. Application; identification inspection required; exceptions; form; procedure; additional inspection authorized; agreement with motor vehicle dealer; county sheriff; duties.
60-149. Application; documentation required.
60-151. Certificate of title obtained in name of purchaser; exceptions.
60-169. Vehicle; certificate of title; surrender and cancellation; when required; licensed wrecker or salvage dealer; report; contents; fee; mobile home or manufactured home affixed to real property; certificate of title; surrender and cancellation; procedure; effect; detachment; owner; duties.

60-107 Cabin trailer, defined.

Cabin trailer means a trailer or a semitrailer, which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, whether used for such purposes or instead permanently or temporarily for the advertising, sale, display, or promotion of merchandise or services or for any other commercial purpose except transportation of property for hire or transportation of property for distribution by a private carrier. Cabin trailer does not mean a trailer or semitrailer which is permanently attached to real estate. There are four classes of cabin trailers:

(1) Camping trailer which includes cabin trailers one hundred two inches or less in width and forty feet or less in length and adjusted mechanically smaller for towing;

(2) Mobile home which includes cabin trailers more than one hundred two inches in width or more than forty feet in length;

(3) Travel trailer which includes cabin trailers not more than one hundred two inches in width nor more than forty feet in length from front hitch to rear bumper, except as provided in subdivision (2)(k) of section 60-6,288; and

(4) Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent frame and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, except that manufactured home includes any structure that meets all of the requirements of this subdivision other than the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, as such act existed on January 1, 2022, 42 U.S.C. 5401 et seq.

Source: Laws 2005, LB 276, § 7; Laws 2008, LB797, § 1; Laws 2019, LB79, § 1; Laws 2020, LB944, § 5; Laws 2021, LB149, § 1; Laws 2022, LB750, § 5.
Operative date July 21, 2022.

60-119.01 Low-speed vehicle, defined.

Low-speed vehicle means a (1) four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2022, or (2) three-wheeled motor vehicle (a) whose maximum speed attainable is not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) which is equipped with a windshield and an occupant protection system. A motorcycle with a sidecar attached is not a low-speed vehicle.

Source: Laws 2007, LB286, § 5; Laws 2011, LB289, § 7; Laws 2016, LB929, § 1; Laws 2017, LB263, § 12; Laws 2018, LB909, § 14; Laws 2019, LB79, § 2; Laws 2019, LB270, § 6; Laws 2020, LB944, § 6; Laws 2021, LB149, § 2; Laws 2022, LB750, § 6.
Operative date July 21, 2022.

60-142.11 Assembled vehicle; application for certificate of title; procedure.

The owner of an assembled vehicle may apply for a certificate of title by presenting a certificate of title for one major component part, a bill of sale for all other major component parts replaced, a statement that an inspection has been conducted on the vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the vehicle as

the year application for title was made and the make of the vehicle as assembled.

Source: Laws 2018, LB909, § 23; Laws 2022, LB750, § 7.
Operative date July 21, 2022.

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

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

(ii) In addition to the information required under subdivision (1)(a)(i) of this section, the application for a certificate of title shall contain (A)(I) the full legal name as defined in section 60-468.01 of each owner or (II) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (B)(I) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (II) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

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

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

(d) The department shall issue certificates of title pursuant to subsection (2) of section 60-142.01 and section 60-142.06. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(e) The department shall issue certificates of title pursuant to section 60-142.09. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

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

(3)(a) If a vehicle has situs in Nebraska, the application for a certificate of title may be filed with the county treasurer of any county.

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

(c) An approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 may apply for a certificate of title for a

vehicle to the county treasurer of any county or the department in a manner provided by the electronic dealer services system.

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

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

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

Source: Laws 2005, LB 276, § 44; Laws 2006, LB 663, § 13; Laws 2006, LB 765, § 3; Laws 2009, LB202, § 12; Laws 2010, LB650, § 11; Laws 2010, LB816, § 4; Laws 2011, LB212, § 2; Laws 2012, LB801, § 29; Laws 2015, LB642, § 3; Laws 2017, LB263, § 13; Laws 2019, LB270, § 7; Laws 2020, LB944, § 8; Laws 2022, LB750, § 8.
Operative date July 21, 2022.

Cross References

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

60-146 Application; identification inspection required; exceptions; form; procedure; additional inspection authorized; agreement with motor vehicle dealer; county sheriff; duties.

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

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

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

proved by the superintendent, from an officer of a state police agency of another state unless an inspection is required under section 60-174.

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

(b) Each county sheriff shall establish a process by which to enter into an agreement with any motor vehicle dealer as defined in section 60-1401.26 with an established place of business as defined in section 60-1401.15 in the county in which the sheriff has jurisdiction in order to collect information for the identification inspection on motor vehicles which are in the inventory of the motor vehicle dealer at the dealer's established place of business in such county. The agreement entered into shall require that the motor vehicle dealer provide the required fee, a copy of the documents evidencing transfer of ownership, and the make, model, vehicle identification number, and odometer reading in a form and manner prescribed by the county sheriff, which shall include a requirement to provide one or more photographs or digital images of the vehicle, the vehicle identification number, and the odometer reading. The county sheriff shall complete the identification inspection as required under subdivision (a) of this subsection using such information and return to the motor vehicle dealer the statement that an identification inspection has been conducted for each motor vehicle as provided in subsection (3) of this section. If the information is incomplete or if there is reason to believe that further inspection is necessary, the county sheriff shall inform the motor vehicle dealer. If the motor vehicle dealer knowingly provides inaccurate or false information, the motor vehicle dealer shall be liable for any damages that result from the provision of such information. The motor vehicle dealer shall keep the records for five years after the date the identification inspection is complete.

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

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

Source: Laws 2005, LB 276, § 46; Laws 2006, LB 765, § 4; Laws 2007, LB286, § 11; Laws 2012, LB801, § 30; Laws 2018, LB909, § 24; Laws 2019, LB80, § 1; Laws 2021, LB343, § 1; Laws 2022, LB749, § 1.
Effective date March 15, 2022.

60-149 Application; documentation required.

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

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

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

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

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

(iv) A certificate of title from another state;

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

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

(vii) Documentation prescribed in section 60-142.01, 60-142.02, 60-142.04, 60-142.05, 60-142.09, or 60-142.11 or documentation of compliance with section 76-1607;

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

(ix) In the case of a motor vehicle, a trailer, an all-terrain vehicle, a utility-type vehicle, or a minibike, an affidavit by the holder of a motor vehicle auction dealer's license as described in subdivision (11) of section 60-1406 affirming that the certificate of title is unavailable and that the vehicle (A) is a salvage vehicle through payment of a total loss settlement, (B) is a salvage vehicle purchased by the auction dealer, or (C) has been donated to an organization operating under section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01.

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

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

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

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

(ii) A certificate of title from another state;

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

(iv) Evidence of ownership as provided for in section 30-24,125, sections 52-601.01 to 52-605, sections 60-1901 to 60-1911, or sections 60-2401 to 60-2411, or documentation of compliance with section 76-1607; or

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

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

(3) For purposes of this section, certificate of title includes a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle. Only a salvage branded certificate of title shall be issued to any vehicle conveyed upon a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle. A previously salvage branded certificate of title may be issued if, prior to application, the applicant's vehicle has been repaired and inspected as provided in section 60-146.

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

(5)(a) If an affidavit is submitted under subdivision (1)(b)(ix) of this section, the holder of a motor vehicle auction dealer's license shall certify that (i) it has made at least two written attempts and has been unable to obtain the properly endorsed certificate of title to the property noted in the affidavit from the owner and (ii) thirty days have expired after the mailing of a written notice regarding the intended disposition of the property noted in the affidavit by certified mail, return receipt requested, to the last-known address of the owner and to any lien or security interest holder of record of the property noted in the affidavit.

(b) The notice under subdivision (5)(a)(ii) of this section shall contain a description of the property noted in the affidavit and a statement that title to the property noted in the affidavit shall vest in the holder of the motor vehicle auction dealer's license thirty days after the date such notice was mailed.

(c) The mailing of notice and the expiration of thirty days under subdivision (5)(a)(ii) of this section shall extinguish any lien or security interest of a lienholder or security interest holder in the property noted in the affidavit, unless the lienholder or security interest holder has claimed such property within such thirty-day period. The holder of a motor vehicle auction dealer's

license shall transfer possession of the property noted in the affidavit to the lienholder or security interest holder claiming such property.

Source: Laws 2005, LB 276, § 49; Laws 2006, LB 663, § 15; Laws 2010, LB650, § 13; Laws 2010, LB933, § 1; Laws 2012, LB801, § 33; Laws 2017, LB263, § 14; Laws 2017, LB492, § 12; Laws 2018, LB275, § 1; Laws 2018, LB909, § 26; Laws 2019, LB270, § 8; Laws 2022, LB750, § 9.
Operative date July 21, 2022.

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

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

(2) If the purchaser of a vehicle does not obtain a certificate of title in accordance with subsection (1) of this section within thirty days after the sale of the vehicle, the seller of such vehicle may request the department to update the electronic certificate of title record. The department shall update such record upon receiving evidence of a sale satisfactory to the director.

Source: Laws 2005, LB 276, § 51; Laws 2011, LB163, § 14; Laws 2019, LB111, § 2; Laws 2019, LB270, § 9; Laws 2022, LB750, § 10.
Operative date July 21, 2022.

60-169 Vehicle; certificate of title; surrender and cancellation; when required; licensed wrecker or salvage dealer; report; contents; fee; mobile home or manufactured home affixed to real property; certificate of title; surrender and cancellation; procedure; effect; detachment; owner; duties.

(1)(a) Except as otherwise provided in subdivision (c) of this subsection, each owner of a vehicle and each person mentioned as owner in the last certificate of title, when the vehicle is dismantled, destroyed, or changed in such a manner that it loses its character as a vehicle or changed in such a manner that it is not the vehicle described in the certificate of title, shall surrender his or her certificate of title to any county treasurer or to the department. If the certificate of title is surrendered to a county treasurer, he or she shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon the records and shall notify the department of such cancellation. Beginning on the implementation date designated by the director pursuant to subsection (3) of section 60-1508, a wrecker or salvage dealer shall report electronically to the department using the electronic reporting system. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted thereon, enter a cancellation upon its records.

(b) This subdivision applies to all licensed wrecker or salvage dealers and, except as otherwise provided in this subdivision, to each vehicle located on the premises of such dealer. For each vehicle required to be reported under 28 C.F.R. 25.56, as such regulation existed on January 1, 2022, the information obtained by the department under this section may be reported to the National

Motor Vehicle Title Information System in a format that will satisfy the requirement for reporting under 28 C.F.R. 25.56, as such regulation existed on January 1, 2022. Such report shall include:

(i) The name, address, and contact information for the reporting entity;

(ii) The vehicle identification number;

(iii) The date the reporting entity obtained such motor vehicle;

(iv) The name of the person from whom such motor vehicle was obtained, for use only by a law enforcement or other appropriate government agency;

(v) A statement of whether the motor vehicle was or will be crushed, disposed of, offered for sale, or used for another purpose; and

(vi) Whether the motor vehicle is intended for export outside of the United States.

The department may set and collect a fee, not to exceed the cost of reporting to the National Motor Vehicle Title Information System, from wrecker or salvage dealers for electronic reporting to the National Motor Vehicle Title Information System, which shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. This subdivision does not apply to any vehicle reported by a wrecker or salvage dealer to the National Motor Vehicle Title Information System as required under 28 C.F.R. 25.56, as such regulation existed on January 1, 2022.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) For purposes of this section:

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

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

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

Source: Laws 2005, LB 276, § 69; Laws 2006, LB 663, § 19; Laws 2012, LB14, § 6; Laws 2012, LB751, § 10; Laws 2012, LB801, § 44; Laws 2018, LB909, § 31; Laws 2019, LB719, § 1; Laws 2022, LB750, § 11.
Operative date July 21, 2022.

ARTICLE 3

MOTOR VEHICLE REGISTRATION

Section
60-302.01. Access aisle, defined.
60-336.01. Low-speed vehicle, defined.
60-386. Application; contents.
60-392. Renewal of registration; license plates; validation decals; registration period; expiration.
60-3,101. License plates; when issued; validation decals.
60-3,102. Plate fee.
60-3,113.04. Handicapped or disabled person; parking permit; contents; issuance; duplicate permit.
60-3,119. Personalized message license plates; application; renewal; fee.
60-3,122. Pearl Harbor plates.
60-3,122.02. Gold Star Family plates; eligibility; verification; fee; delivery; fee.
60-3,122.03. Military Honor Plates; design.
60-3,123. Prisoner of war plates; eligibility; verification; fee.

60-302.01 Access aisle, defined.

Access aisle means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with the federal Americans with Disabilities Act of 1990 and the federal regulations adopted in response to the act, as the act and the regulations existed on January 1, 2022.

Source: Laws 2011, LB163, § 18; Laws 2019, LB79, § 3; Laws 2020, LB944, § 11; Laws 2021, LB149, § 3; Laws 2022, LB750, § 12. Operative date July 21, 2022.

60-336.01 Low-speed vehicle, defined.

Low-speed vehicle means a (1) four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2022, or (2) three-wheeled motor vehicle (a) whose maximum speed attainable is not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) which is equipped with a windshield and an occupant protection system. A motorcycle with a sidecar attached is not a low-speed vehicle.

Source: Laws 2007, LB286, § 26; Laws 2011, LB289, § 14; Laws 2014, LB776, § 1; Laws 2015, LB313, § 1; Laws 2016, LB929, § 2; Laws 2017, LB263, § 27; Laws 2018, LB909, § 46; Laws 2019,

LB79, § 4; Laws 2019, LB270, § 13; Laws 2020, LB944, § 13; Laws 2021, LB149, § 4; Laws 2022, LB750, § 13.
Operative date July 21, 2022.

60-386 Application; contents.

(1) Each new application shall contain, in addition to other information as may be required by the department, the name and residential and mailing address of the applicant and a description of the motor vehicle or trailer, including the color, the manufacturer, the identification number, the United States Department of Transportation number if required by 49 C.F.R. 390.5 through 390.21, as such regulations existed on January 1, 2022, and the weight of the motor vehicle or trailer required by the Motor Vehicle Registration Act. For trailers which are not required to have a certificate of title under section 60-137 and which have no identification number, the assignment of an identification number shall be required and the identification number shall be issued by the county treasurer or department. With the application the applicant shall pay the proper registration fee and shall state whether the motor vehicle is propelled by alternative fuel and, if alternative fuel, the type of fuel. The application shall also contain a notification that bulk fuel purchasers may be subject to federal excise tax liability. The department shall include such notification in the notices required by section 60-3,186.

(2) In addition to the information required under subsection (1) of this section, the application for registration shall contain (a)(i) the full legal name as defined in section 60-468.01 of each owner or (ii) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (b)(i) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (ii) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

Source: Laws 2005, LB 274, § 86; Laws 2011, LB289, § 17; Laws 2012, LB801, § 58; Laws 2013, LB207, § 1; Laws 2015, LB642, § 4; Laws 2016, LB929, § 3; Laws 2017, LB263, § 31; Laws 2018, LB909, § 55; Laws 2019, LB79, § 6; Laws 2019, LB270, § 14; Laws 2020, LB944, § 14; Laws 2021, LB149, § 5; Laws 2022, LB750, § 14.
Operative date July 21, 2022.

60-392 Renewal of registration; license plates; validation decals; registration period; expiration.

(1) Except as provided otherwise in this section, registration may be renewed annually in a manner designated by the department and upon payment of the same fee as provided for the original registration. On making an application for renewal, the registration certificate for the preceding registration period or renewal notice or other evidence designated by the department shall be presented with the application. A person may renew an annual registration up to thirty days prior to the date of expiration.

(2) The certificate of registration and license plates issued by the department shall be valid during the registration period for which they are issued, and

when validation decals issued pursuant to section 60-3,101 have been affixed to the license plates, the plates shall also be valid for the registration period designated by such validation decals. If a person renews an annual registration up to thirty days prior to the date of expiration, the registration shall be valid for such time period as well.

(3) The registration period for motor vehicles and trailers required to be registered as provided in section 60-362 shall expire on the first day of the month one year from the month of issuance, and renewal shall become due on such day and shall become delinquent on the first day of the following month.

(4) Subsections (1) through (3) of this section do not apply to dealer's license plates, repossession plates, and transporter plates as provided in sections 60-373, 60-375, 60-378, and 60-379, which plates shall be issued for a calendar year.

(5) The registration period for apportioned vehicles as provided in section 60-3,198 shall be renewed monthly, quarterly, or annually at the discretion of the director. Such registration period expires on the last day of the registration period and renewal is delinquent on the first day of the second full month following such expiration date. The department may adopt and promulgate rules and regulations to establish a staggered registration system for apportioned vehicles registered pursuant to section 60-3,198, including the collection of eighteen or fewer months of registration fees.

Source: Laws 2005, LB 274, § 92; Laws 2006, LB 789, § 1; Laws 2022, LB750, § 15.
Operative date July 21, 2022.

60-3,101 License plates; when issued; validation decals.

(1) License plates shall be issued every six years beginning with the license plates issued in the year 2005.

(2) In the years in which plates are not issued, in lieu of issuing such license plates, the department shall furnish to every person whose motor vehicle or trailer is registered one or two validation decals, as the case may be. Such validation decals shall bear the year for which issued and be so constructed as to permit them to be permanently affixed to the plates.

(3) This section shall not apply to license plates issued pursuant to sections 60-3,203 and 60-3,228.

Source: Laws 2005, LB 274, § 101; Laws 2016, LB783, § 6; Laws 2022, LB750, § 16.
Operative date July 21, 2022.

60-3,102 Plate fee.

(1) Whenever new license plates, including duplicate or replacement license plates, are issued to any person, a fee per plate shall be charged in addition to all other required fees. The license plate fee shall be determined by the department and shall only cover the cost of the license plate and validation decals but shall not exceed:

(a) Three dollars and fifty cents through December 31, 2022; and

(b) Four dollars and twenty-five cents beginning January 1, 2023.

(2) All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(3) This section shall not apply to license plates issued pursuant to section 60-3,122, 60-3,122.02, 60-3,123, 60-3,124, or 60-3,125.

Source: Laws 2005, LB 274, § 102; Laws 2019, LB138, § 7; Laws 2022, LB750, § 17.
Operative date July 21, 2022.

60-3,113.04 Handicapped or disabled person; parking permit; contents; issuance; duplicate permit.

(1) A handicapped or disabled parking permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the regulations adopted by the United States Department of Transportation in 23 C.F.R. part 1235, UNIFORM SYSTEM FOR PARKING FOR PERSONS WITH DISABILITIES, as such regulations existed on January 1, 2022.

(2) No handicapped or disabled parking permit shall be issued to any person or for any motor vehicle if any permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741.02. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 60-3,113.02, 60-3,113.03, and 60-3,113.05.

(3) A duplicate handicapped or disabled parking permit may be provided up to two times during any single permit period if a permit is destroyed, lost, or stolen. Such duplicate permit shall be issued as provided in section 60-3,113.02 or 60-3,113.03, whichever is applicable, except that a new certification by a physician, a physician assistant, or an advanced practice registered nurse need not be provided. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued. If a person has been issued two duplicate permits under this subsection and needs another permit, such person shall reapply for a new permit under section 60-3,113.02 or 60-3,113.03, whichever is applicable.

Source: Laws 2011, LB163, § 26; Laws 2012, LB751, § 13; Laws 2013, LB35, § 1; Laws 2014, LB657, § 8; Laws 2014, LB776, § 2; Laws 2015, LB313, § 2; Laws 2016, LB929, § 4; Laws 2017, LB263, § 38; Laws 2018, LB909, § 62; Laws 2019, LB79, § 7; Laws 2020, LB944, § 20; Laws 2021, LB149, § 6; Laws 2022, LB750, § 18.
Operative date July 21, 2022.

60-3,119 Personalized message license plates; application; renewal; fee.

(1) Application for personalized message license plates shall be made to the department. The department shall make available through each county treasurer forms to be used for such applications.

(2) Each initial application shall be accompanied by a fee of forty dollars. The fees shall be remitted to the State Treasurer. The State Treasurer shall credit forty percent of the fee to the Highway Trust Fund and sixty percent of the fee to the Department of Motor Vehicles Cash Fund.

(3) An application for renewal of a license plate previously approved and issued shall be accompanied by a fee of forty dollars. County treasurers

collecting fees pursuant to this subsection shall remit them to the State Treasurer. The State Treasurer shall credit forty percent of the fee to the Highway Trust Fund and sixty percent of the fee to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 119; Laws 2009, LB110, § 5; Laws 2012, LB801, § 72; Laws 2019, LB356, § 9; Laws 2022, LB750, § 19. Operative date July 21, 2022.

60-3,122 Pearl Harbor plates.

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that he or she is a survivor of the Japanese attack on Pearl Harbor if he or she:

(a) Was a member of the United States Armed Forces on December 7, 1941;

(b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three miles;

(c) Was discharged or otherwise separated with a characterization of honorable from the United States Armed Forces; and

(d) Holds a current membership in a Nebraska Chapter of the Pearl Harbor Survivors Association.

(2) Pearl Harbor license plates shall be issued upon the applicant paying the license plate fee as provided in subsection (3) of this section and furnishing proof satisfactory to the department that the applicant fulfills the requirements provided by subsection (1) of this section. Any number of motor vehicles, trailers, or semitrailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) No license plate fee shall be required for Pearl Harbor license plates.

(4) If the license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

(5) License plates issued under this section shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.

(6) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

Source: Laws 2005, LB 274, § 122; Laws 2007, LB286, § 40; Laws 2009, LB110, § 6; Laws 2010, LB705, § 1; Laws 2015, LB642, § 5;

Laws 2017, LB263, § 42; Laws 2019, LB138, § 9; Laws 2019, LB270, § 16; Laws 2022, LB750, § 20.
Operative date July 21, 2022.

60-3,122.02 Gold Star Family plates; eligibility; verification; fee; delivery; fee.

(1) Any person who is a surviving spouse, whether remarried or not, or an ancestor, including a stepparent, a descendant, including a stepchild, a foster parent or a person in loco parentis, or a sibling of a person who died while in good standing on active duty in the military service of the United States may apply to the department for Gold Star Family plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Gold Star Family plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. In order to be eligible for Gold Star Family plates, a person shall register with the Department of Veterans' Affairs pursuant to section 80-414. The plates shall be issued upon payment of the license fee described in subsection (2) of this section and verification by the Department of Motor Vehicles of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414.

(2)(a) No additional fee shall be required for consecutively numbered Gold Star Family plates issued under this section and such plates shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.

(b)(i) Each application for initial issuance of personalized message Gold Star Family plates shall be accompanied by a fee of forty dollars. An application for renewal of such plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(ii) No license plate fee under section 60-3,102 shall be required for personalized message Gold Star Family plates issued under this section, other than the renewal fee provided for in subdivision (2)(b)(i) of this section. Such plates shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually and the renewal fee provided for in subdivision (2)(b)(i) of this section is paid.

(3)(a) When the department receives an application for Gold Star Family plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. If delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling

for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue Gold Star Family plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or trailer. If Gold Star Family plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request and without charge.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

(4) The owner of a motor vehicle or trailer bearing Gold Star Family plates may apply to the county treasurer to have such plates transferred at no cost to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates, if any, credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period.

(5) If the cost of manufacturing Gold Star Family plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Nebraska Veteran Cemetery System Operation Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Gold Star Family plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Nebraska Veteran Cemetery System Operation Fund.

Source: Laws 2007, LB570, § 3; Laws 2009, LB110, § 7; Laws 2009, LB331, § 2; Laws 2012, LB801, § 75; Laws 2017, LB263, § 43; Laws 2019, LB138, § 10; Laws 2019, LB270, § 17; Laws 2021, LB78, § 1; Laws 2021, LB113, § 6; Laws 2022, LB750, § 21. Operative date July 21, 2022.

60-3,122.03 Military Honor Plates; design.

(1) The department shall design license plates to be known as Military Honor Plates.

(2) The department shall create designs honoring persons who have served or are serving in the United States Army, United States Army Reserve, United States Navy, United States Navy Reserve, United States Marine Corps, United States Marine Corps Reserve, United States Coast Guard, United States Coast Guard Reserve, United States Air Force, United States Air Force Reserve, Air National Guard, or Army National Guard.

(3) There shall be twelve such designs, one for each of such armed forces reflecting its official emblem, official seal, or other official image. The issuance of plates for each of such armed forces shall be conditioned on the approval of

the armed forces owning the copyright to the official emblem, official seal, or other official image.

(4) The department shall create five additional designs honoring persons who are serving or have served in the armed forces of the United States and who have been awarded the Afghanistan Campaign Medal, Iraq Campaign Medal, Global War on Terrorism Expeditionary Medal, Southwest Asia Service Medal, or Vietnam Service Medal.

(5) A person may qualify for a Military Honor Plate by registering with the Department of Veterans' Affairs pursuant to section 80-414. The Department of Motor Vehicles shall verify the applicant's eligibility for a plate created pursuant to this section by consulting the registry established by the Department of Veterans' Affairs.

(6) The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The Department of Motor Vehicles shall make applications available for each type of plate when it is designed. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,122.04.

(7) One type of Military Honor Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(8) One type of Military Honor Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(9) The department shall cease to issue Military Honor Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2014, LB383, § 9; Laws 2017, LB45, § 1; Laws 2019, LB138, § 11; Laws 2019, LB356, § 10; Laws 2020, LB944, § 21; Laws 2022, LB750, § 22.
Operative date July 21, 2022.

60-3,123 Prisoner of war plates; eligibility; verification; fee.

(1) Any person who was captured and incarcerated by an enemy of the United States during a period of conflict with such enemy and who was discharged or otherwise separated with a characterization of honorable from or is currently serving in the United States Armed Forces may, in addition to the application required in section 60-385, apply to the department for license plates designed to indicate that he or she is a former prisoner of war.

(2) In order to be eligible for license plates under this section, a person shall register with the Department of Veterans' Affairs pursuant to section 80-414. The license plates shall be issued upon the applicant paying the license plate fee as provided in subsection (3) of this section and verification by the Department of Motor Vehicles of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414. Any number of

motor vehicles, trailers, or semitrailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) No license plate fee shall be required for license plates under this section.

(4) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the license plates shall be issued replacement license plates upon request and without charge.

(5) License plates issued under this section shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.

(6) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

Source: Laws 2005, LB 274, § 123; Laws 2007, LB286, § 41; Laws 2009, LB110, § 8; Laws 2010, LB705, § 2; Laws 2014, LB383, § 6; Laws 2017, LB263, § 45; Laws 2019, LB138, § 13; Laws 2019, LB270, § 19; Laws 2021, LB78, § 2; Laws 2022, LB750, § 23. Operative date July 21, 2022.

60-3,124 Disabled veteran plates; eligibility; verification; fee.

(1) Any person who is a veteran of the United States Armed Forces, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who is classified by the United States Department of Veterans Affairs as one hundred percent service-connected disabled may, in addition to the application required in section 60-385, apply to the Department of Motor Vehicles for license plates designed by the department to indicate that the applicant is a disabled veteran. The inscription on the license plates shall be D.A.V. immediately below the license plate number to indicate that the holder of the license plates is a disabled veteran.

(2) In order to be eligible for license plates under this section, a person shall register with the Department of Veterans' Affairs pursuant to section 80-414. The plates shall be issued upon the applicant paying the license plate fee as provided in subsection (3) of this section and verification by the Department of Motor Vehicles of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414. Any number of motor vehicles, trailers, or semitrailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) No license plate fee shall be required for license plates under this section.

(4) If the license plates issued under this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates as provided in section 60-3,157.

(5) License plates issued under this section shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.

(6) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

Source: Laws 2005, LB 274, § 124; Laws 2007, LB286, § 42; Laws 2009, LB110, § 9; Laws 2010, LB705, § 3; Laws 2015, LB642, § 6; Laws 2017, LB263, § 46; Laws 2019, LB138, § 14; Laws 2019, LB270, § 20; Laws 2021, LB78, § 3; Laws 2022, LB750, § 24. Operative date July 21, 2022.

60-3,125 Purple Heart plates; eligibility; verification; fee.

(1) Any person may, in addition to the application required by section 60-385, apply to the department for license plates designed by the department to indicate that the applicant has received from the federal government an award of a Purple Heart. The inscription of the plates shall be designed so as to include a facsimile of the award and beneath any numerical designation upon the plates pursuant to section 60-370 the words Purple Heart separately on one line and the words Combat Wounded on the line below.

(2) In order to be eligible for license plates under this section, a person shall register with the Department of Veterans' Affairs pursuant to section 80-414. The license plates shall be issued upon payment of the license plate fee as provided in subsection (3) of this section and verification by the Department of Motor Vehicles of an applicant's eligibility using the registry established by the Department of Veterans' Affairs pursuant to section 80-414. Any number of motor vehicles, trailers, or semitrailers owned by the applicant may be so licensed at any one time. Motor vehicles and trailers registered under section 60-3,198 shall not be so licensed.

(3) No license plate fee shall be required for license plates under this section.

(4) If license plates issued pursuant to this section are lost, stolen, or mutilated, the recipient of the plates shall be issued replacement license plates upon request and without charge.

(5) License plates issued under this section shall not require the payment of any additional license plate fees and shall be permanently attached to the vehicle to which the plates are registered as long as the vehicle is properly registered by the applicant annually.

(6) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department

may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

Source: Laws 2005, LB 274, § 125; Laws 2007, LB286, § 43; Laws 2009, LB110, § 10; Laws 2014, LB383, § 7; Laws 2017, LB263, § 47; Laws 2019, LB138, § 15; Laws 2019, LB270, § 21; Laws 2021, LB78, § 4; Laws 2022, LB750, § 25.
Operative date July 21, 2022.

60-3,126 Amateur radio station license plates; fee; renewal.

(1) Any person who holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission and is the owner of a motor vehicle, trailer, or semitrailer, except for motor vehicles and trailers registered under section 60-3,198, may, in addition to the application required by section 60-385, apply to the department for license plates upon which shall be inscribed the official amateur radio call letters of such applicant.

(2) Such license plates shall be issued, in lieu of the usual numbers and letters, to such an applicant upon payment of the regular license fee and the payment of an additional fee of five dollars and furnishing proof that the applicant holds such an unrevoked and unexpired amateur radio station license. The additional fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. Only one such motor vehicle or trailer owned by an applicant shall be so registered at any one time.

(3) An applicant applying for renewal of amateur radio station license plates shall again furnish proof that he or she holds an unrevoked and unexpired amateur radio station license issued by the Federal Communications Commission.

(4) The department shall prescribe the size and design of the license plates and furnish such plates to the persons applying for and entitled to the same upon the payment of the required fee.

(5) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subsection. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

Source: Laws 2005, LB 274, § 126; Laws 2007, LB286, § 44; Laws 2017, LB263, § 48; Laws 2019, LB270, § 22; Laws 2022, LB750, § 26.
Operative date July 21, 2022.

60-3,128 Nebraska Cornhusker Spirit Plates; application; fee; delivery; fee; transfer; credit allowed.

(1) A person may apply to the department for Nebraska Cornhusker Spirit Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, or semitrailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a spirit plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or

over shall affix the appropriate tonnage decal to the spirit plate. The department shall make forms available for such applications through the county treasurers. Each application for initial issuance or renewal of spirit plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit sixty percent of the fees for initial issuance and renewal of spirit plates to the Department of Motor Vehicles Cash Fund and forty percent of the fees to the Highway Trust Fund.

(2)(a) When the department receives an application for spirit plates, the department may deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. If delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue spirit plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle or trailer. If spirit plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

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

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

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

Source: Laws 2005, LB 274, § 128; Laws 2007, LB286, § 45; Laws 2009, LB110, § 11; Laws 2012, LB801, § 76; Laws 2017, LB263, § 49; Laws 2019, LB270, § 23; Laws 2019, LB356, § 13; Laws 2021, LB113, § 8; Laws 2022, LB750, § 27.
Operative date July 21, 2022.

60-3,130.02 Historical license plates; fees; delivery; fee.

(1) An initial processing fee of ten dollars shall be submitted with an application under section 60-3,130 to defray the costs of issuing the first plate to each collector and to establish a distinct identification number for each collector. A fee of fifty dollars for each vehicle so registered shall also be submitted with the application. When the department receives an application for historical license plates, the department may deliver the plates and registration certificate to the applicant by United States mail. The department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(2) For use of license plates as provided in section 60-3,130.04, a fee of twenty-five dollars shall be submitted with the application in addition to the fees specified in subsection (1) of this section.

(3) The fees shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2006, LB 663, § 26; Laws 2022, LB750, § 28.
Operative date July 21, 2022.

60-3,135.01 Special interest motor vehicle license plates; application; fee; delivery; fee; special interest motor vehicle; restrictions on use; prohibited acts; penalty.

(1) The department shall either modify an existing plate design or design license plates to identify special interest motor vehicles, to be known as special interest motor vehicle license plates. The department, in designing such special interest motor vehicle license plates, shall include the words special interest and limit the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall choose the design of the plate. The department shall make applications available for this type of plate when it is designed.

(2) One type of special interest motor vehicle license plate shall be alphanumeric plates. The department shall:

(a) Assign a designation up to seven characters; and

(b) Not use a county designation.

(3) One type of special interest motor vehicle license plate shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118.

(4) A person may apply to the department for a special interest motor vehicle license plate in lieu of regular license plates on an application prescribed and provided by the department for any special interest motor vehicle, except that no motor vehicle registered under section 60-3,198, autocycle, motorcycle, or trailer shall be eligible for special interest motor vehicle license plates. The department shall make forms available for such applications through the county treasurers.

(5) The form shall contain a description of the special interest motor vehicle owned and sought to be registered, including the make, body type, model, serial number, and year of manufacture.

(6)(a) In addition to all other fees required to register a motor vehicle, each application for initial issuance or renewal of a special interest motor vehicle

license plate shall be accompanied by a special interest motor vehicle license plate fee of fifty dollars. Twenty-five dollars of the special interest motor vehicle license plate fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund, and twenty-five dollars of the special interest motor vehicle license plate fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(b) If a special interest motor vehicle license plate is lost, stolen, or mutilated, the owner shall be issued a replacement license plate pursuant to section 60-3,157.

(7) When the department receives an application for a special interest motor vehicle license plate, the department may deliver the plate and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the special interest motor vehicle is registered and the delivery of the plate and registration certificate shall be made through a secure process and system. If delivery of the plates and registration certificate is made by the department to the applicant, the department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer or the department shall issue the special interest motor vehicle license plate in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the special interest motor vehicle.

(8) If the cost of manufacturing special interest motor vehicle license plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Department of Motor Vehicles Cash Fund under this section shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of special interest motor vehicle license plates and the amount charged pursuant to section 60-3,102 with respect to such license plates and the remainder shall be credited to the Department of Motor Vehicles Cash Fund.

(9) The special interest motor vehicle license plate shall be affixed to the rear of the special interest motor vehicle.

(10) A special interest motor vehicle shall not be used for the same purposes and under the same conditions as other motor vehicles of the same type and shall not be used for business or occupation or regularly for transportation to and from work. A special interest motor vehicle may be driven on the public streets and roads only for occasional transportation, public displays, parades, and related pleasure or hobby activities.

(11) It shall be unlawful to own or operate a motor vehicle with special interest motor vehicle license plates in violation of this section. Upon conviction of a violation of any provision of this section, a person shall be guilty of a Class V misdemeanor.

(12) For purposes of this section, special interest motor vehicle means a motor vehicle of any age which is being collected, preserved, restored, or maintained by the owner as a leisure pursuit and not used for general transportation of persons or cargo.

Source: Laws 2012, LB216, § 4; Laws 2015, LB231, § 15; Laws 2017, LB263, § 51; Laws 2021, LB113, § 9; Laws 2022, LB750, § 29. Operative date July 21, 2022.

60-3,193.01 International Registration Plan; adopted.

For purposes of the Motor Vehicle Registration Act, the International Registration Plan is adopted and incorporated by reference as the plan existed on January 1, 2022.

Source: Laws 2008, LB756, § 10; Laws 2009, LB331, § 4; Laws 2010, LB805, § 2; Laws 2011, LB212, § 3; Laws 2012, LB751, § 14; Laws 2013, LB35, § 2; Laws 2014, LB776, § 3; Laws 2015, LB313, § 3; Laws 2016, LB929, § 5; Laws 2017, LB263, § 55; Laws 2018, LB909, § 69; Laws 2019, LB79, § 8; Laws 2020, LB944, § 25; Laws 2021, LB149, § 8; Laws 2022, LB750, § 30. Operative date July 21, 2022.

60-3,198 Fleet of vehicles in interjurisdiction commerce; registration; exception; application; fees; temporary authority; evidence of registration; proportional registration; removal from fleet; effect; unladen-weight registration; trip permit; fee.

(1)(a) Any owner engaged in operating a fleet of apportionable vehicles in this state in interjurisdiction commerce may, in lieu of registration of such apportionable vehicles under the general provisions of the Motor Vehicle Registration Act, register and license such fleet for operation in this state by filing a statement and the application required by section 60-3,203 with the Division of Motor Carrier Services of the department. The statement shall be in such form and contain such information as the division requires, declaring the total mileage operated by such vehicles in all jurisdictions and in this state during the preceding year and describing and identifying each such apportionable vehicle to be operated in this state during the ensuing license period.

(b)(i) Until July 1, 2021, upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-two dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska injurisdiction fleet distance.

(ii) Beginning July 1, 2021, and until July 1, 2025, upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-five dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska injurisdiction fleet distance.

(iii) Beginning July 1, 2025, upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-three dollars and fifty cents per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska injurisdiction fleet distance.

(c) Temporary authority which permits the operation of a fleet or an addition to a fleet in this state while the application is being processed may be issued upon application to the division if necessary to complete processing of the application.

(d) Upon completion of such processing and receipt of the appropriate fees, the division shall issue to the applicant a sufficient number of distinctive registration certificates which provide a list of the jurisdictions in which the apportionable vehicle has been apportioned, the weight for which registered, and such other evidence of registration for display on the apportionable vehicle as the division determines appropriate for each of the apportionable vehicles of his or her fleet, identifying it as a part of an interjurisdiction fleet proportionately registered. Such registration certificates may be displayed as a legible paper copy or electronically as authorized by the department. All fees received as provided in this section shall be remitted to the State Treasurer for credit to the Motor Carrier Services Division Distributive Fund.

(e) The apportionable vehicles so registered shall be exempt from all further registration and license fees under the Motor Vehicle Registration Act for movement or operation in the State of Nebraska except as provided in section 60-3,203. The proportional registration and licensing provision of this section shall apply to apportionable vehicles added to such fleets and operated in this state during the license period except with regard to permanent license plates issued under section 60-3,203.

(f) The right of applicants to proportional registration under this section shall be subject to the terms and conditions of any reciprocity agreement, contract, or consent made by the division.

(g) When a nonresident fleet owner has registered his or her apportionable vehicles, his or her apportionable vehicles shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce when the jurisdiction of base registration for such fleet accords the same consideration for fleets with a base registration in Nebraska. Each apportionable vehicle of a fleet registered by a resident of Nebraska shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce.

(2) Mileage proportions for interjurisdiction fleets not operated in this state during the preceding year shall be determined by the division upon the application of the applicant on forms to be supplied by the division which shall show the operations of the preceding year in other jurisdictions and estimated operations in Nebraska or, if no operations were conducted the previous year, a full statement of the proposed method of operation.

(3) Any owner complying with and being granted proportional registration shall preserve the records on which the application is made for a period of three years following the current registration period. Upon request of the division, the owner shall make such records available to the division at its office for audit as to accuracy of computation and payments or pay the costs of an audit at the home office of the owner by a duly appointed representative of the division if the office where the records are maintained is not within the State of Nebraska. The division may enter into agreements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. All payments received to cover the costs of an audit shall be remitted by the division to the State Treasurer for credit to the Motor Carrier Division Cash Fund. No deficiency shall be assessed and no claim for credit shall be allowed for any license registration period for which records on which the application was made are no longer required to be maintained.

(4) If the division claims that a greater amount of fee is due under this section than was paid, the division shall notify the owner of the additional amount claimed to be due. The owner may accept such claim and pay the amount due, or he or she may dispute the claim and submit to the division any information which he or she may have in support of his or her position. If the dispute cannot otherwise be resolved within the division, the owner may petition for an appeal of the matter. The director shall appoint a hearing officer who shall hear the dispute and issue a written decision. Any appeal shall be in accordance with the Administrative Procedure Act. Upon expiration of the time for perfecting an appeal if no appeal is taken or upon final judicial determination if an appeal is taken, the division shall deny the owner the right to further registration for a fleet license until the amount finally determined to be due, together with any costs assessed against the owner, has been paid.

(5) Every applicant who licenses any apportionable vehicles under this section and section 60-3,203 shall have his or her registration certificates issued only after all fees under such sections are paid and, if applicable, proof has been furnished of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by 26 U.S.C. 4481 of the Internal Revenue Code as defined in section 49-801.01.

(6)(a) In the event of the transfer of ownership of any registered apportionable vehicle, (b) in the case of loss of possession because of fire, natural disaster, theft, or wrecking, junking, or dismantling of any registered apportionable vehicle, (c) when a salvage branded certificate of title is issued for any registered apportionable vehicle, (d) whenever a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) upon trade-in or surrender of a registered apportionable vehicle under a lease, or (f) in case of a change in the situs of a registered apportionable vehicle to a location outside of this state, its registration shall expire, except that if the registered owner or lessee applies to the division after such transfer or loss of possession and accompanies the application with a fee of one dollar and fifty cents, he or she may have any remaining credit of vehicle fees and taxes from the previously registered apportionable vehicle applied toward payment of any vehicle fees and taxes due and owing on another registered apportionable vehicle. If such registered apportionable vehicle has a greater gross vehicle weight than that of the

previously registered apportionable vehicle, the registered owner or lessee of the registered apportionable vehicle shall additionally pay only the registration fee for the increased gross vehicle weight for the remaining months of the registration period based on the factors determined by the division in the original fleet application.

(7) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles (a) because of a transfer of ownership of the registered apportionable vehicle, (b) because of loss of possession due to fire, natural disaster, theft, or wrecking, junking, or dismantling of the registered apportionable vehicle, (c) because a salvage branded certificate of title is issued for the registered apportionable vehicle, (d) because a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) because of a trade-in or surrender of the registered apportionable vehicle under a lease, or (f) because of a change in the situs of the registered apportionable vehicle to a location outside of this state, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, if such certificate or certificates or such other evidence of registration is unavailable, then by making an affidavit to the division of such transfer or loss, receive a refund of that portion of the unused registration fee based upon the number of unexpired months remaining in the registration period from the date of transfer or loss. No refund shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is transferred or lost within the same month as acquired, no refund shall be allowed for such month. Such refund may be in the form of a credit against any registration fees that have been incurred or are, at the time of the refund, being incurred by the registered apportionable vehicle owner. The Nebraska-based fleet owner shall make a claim for a refund under this subsection within the registration period or shall be deemed to have forfeited his or her right to the refund.

(8) In case of addition to the registered fleet during the registration period, the owner engaged in operating the fleet shall pay the proportionate registration fee from the date the vehicle was placed into service or, if the vehicle was previously registered, the date the prior registration expired or the date Nebraska became the base jurisdiction for the fleet, whichever is first, for the remaining balance of the registration period. The fee for any permanent license plate issued for such addition pursuant to section 60-3,203 shall be the full fee required by such section, regardless of the number of months remaining in the license period.

(9) In lieu of registration under subsections (1) through (8) of this section, the title holder of record may apply to the division for special registration, to be known as an unladen-weight registration, for any commercial motor vehicle or combination of vehicles which have been registered to a Nebraska-based fleet owner within the current or previous registration period. Such registration shall be valid only for a period of thirty days and shall give no authority to operate the vehicle except when empty. The fee for such registration shall be twenty dollars for each vehicle, which fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. The issuance of such permits shall be governed by section 60-3,179.

(10) Any person may, in lieu of registration under subsections (1) through (8) of this section or for other jurisdictions as approved by the director, purchase a trip permit for any nonresident truck, truck-tractor, bus, or truck or truck-tractor combination. A trip permit shall be issued before any person required to obtain a trip permit enters this state with such vehicle. The trip permit shall be issued by the director through Internet sales from the department's website. The trip permit shall be valid for a period of seventy-two hours. The fee for the trip permit shall be twenty-five dollars for each truck, truck-tractor, bus, or truck or truck-tractor combination. The fee collected by the director shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 198; Laws 2008, LB756, § 15; Laws 2009, LB331, § 5; Laws 2012, LB751, § 15; Laws 2013, LB250, § 1; Laws 2016, LB666, § 2; Laws 2018, LB177, § 2; Laws 2019, LB79, § 9; Laws 2020, LB944, § 26; Laws 2021, LB113, § 10; Laws 2022, LB750, § 31.
Operative date July 21, 2022.

Cross References

Administrative Procedure Act, see section 84-920.

60-3,203 Permanent license plate; application; fee; delivery; fee; renewal fee; replacement permanent plate; registration certificate replacement; deletion from fleet registration; fee.

(1)(a) Upon application and payment of the fees required pursuant to this section and section 60-3,198, the Division of Motor Carrier Services of the department shall issue to the owner of any fleet of apportionable commercial vehicles with a base registration in Nebraska a permanent license plate for each truck, truck-tractor, and trailer in the fleet. The application shall be accompanied by a fee of three dollars for each truck or truck-tractor and six dollars per trailer. The application shall be on a form developed by the division.

(b) The department may deliver the plates and registration certificate to the applicant by United States mail. The department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant.

(c) The department shall remit fees collected pursuant to this subsection to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

(2) Fleets of apportionable vehicles license plates shall display a distinctive license plate provided by the department pursuant to this section.

(3) Any license plate issued pursuant to this section shall remain affixed to the front of the truck or truck-tractor or to the rear of the trailer or semitrailer as long as the apportionable vehicle is registered pursuant to section 60-3,198 by the owner making the original application pursuant to subsection (1) of this section. Upon transfer of ownership of the truck, truck-tractor, or trailer or transfer of ownership of the fleet or at any time the truck, truck-tractor, or trailer is no longer registered pursuant to section 60-3,198, the license plate shall cease to be active and shall be processed according to the rules and regulations of the department.

(4) The renewal fee for each permanent plate shall be two dollars and shall be assessed and collected in each license period after the period in which the permanent license plates are initially issued at the time all other renewal fees

are collected pursuant to section 60-3,198 unless a truck, truck-tractor, or trailer has been deleted from the fleet registration.

(5)(a) If a permanent license plate is lost or destroyed, the owner shall submit an affidavit to that effect to the division prior to any deletion of the truck, truck-tractor, or trailer from the fleet registration. If the truck, truck-tractor, or trailer is not deleted from the fleet registration, a replacement permanent license plate may be issued upon payment of a fee of three dollars for each truck or truck-tractor and six dollars per trailer.

(b) If the registration certificate for any fleet vehicle is lost or stolen, the division shall collect a fee of one dollar for replacement of such certificate.

(6) If a truck, truck-tractor, or trailer for which a permanent license plate has been issued pursuant to this section is deleted from the fleet registration due to loss of possession by the registrant, the plate shall be returned to the division.

(7) The registrant shall be liable for the full amount of the registration fee due for any truck, truck-tractor, or trailer not deleted from the fleet registration renewal.

(8) All fees collected pursuant to this section other than those collected pursuant to subdivisions (1)(b) and (c) of this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 203; Laws 2020, LB944, § 27; Laws 2022, LB750, § 32.
Operative date July 21, 2022.

60-3,221 Towing of trailers; restrictions; section; how construed.

(1) Except as otherwise provided in the Motor Vehicle Registration Act:

(a) A cabin trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle or apportionable vehicle;

(iii) Farm truck;

(iv) Local truck;

(v) Minitruck;

(vi) Recreational vehicle;

(vii) Bus; or

(viii) Former military vehicle;

(b) A utility trailer shall only be towed by:

(i) A properly registered passenger car;

(ii) A properly registered commercial motor vehicle or apportionable vehicle;

(iii) A properly registered farm truck;

(iv) A properly registered local truck;

(v) A properly registered minitruck;

(vi) A properly registered recreational vehicle;

(vii) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(viii) A properly registered well-boring apparatus;

(ix) A dealer-plated vehicle;

(x) A personal-use dealer-plated vehicle;

(xi) A properly registered bus;

(xii) A properly registered public power district motor vehicle or, beginning January 1, 2023, a properly registered metropolitan utilities district motor vehicle; or

(xiii) A properly registered former military vehicle;

(c) A farm trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle;

(iii) Farm truck;

(iv) Minitruck; or

(v) Former military vehicle;

(d) A commercial trailer shall only be towed by:

(i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(ii) A properly registered local truck;

(iii) A properly registered well-boring apparatus;

(iv) A properly registered commercial motor vehicle or apportionable vehicle;

(v) A dealer-plated vehicle;

(vi) A personal-use dealer-plated vehicle;

(vii) A properly registered bus;

(viii) A properly registered farm truck; or

(ix) A properly registered public power district motor vehicle or, beginning January 1, 2023, a properly registered metropolitan utilities district motor vehicle;

(e) A fertilizer trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle or apportionable vehicle;

(iii) Farm truck; or

(iv) Local truck;

(f) A pole and cable reel trailer shall only be towed by a properly registered:

(i) Commercial motor vehicle or apportionable vehicle;

(ii) Local truck; or

(iii) Public power district motor vehicle or, beginning January 1, 2023, metropolitan utilities district motor vehicle;

(g) A dealer-plated trailer shall only be towed by:

(i) A dealer-plated vehicle;

(ii) A properly registered passenger car;

(iii) A properly registered commercial motor vehicle or apportionable vehicle;

(iv) A properly registered farm truck;

(v) A properly registered minitruck;

(vi) A personal-use dealer-plated vehicle; or

(vii) A properly registered former military vehicle;

(h) Trailers registered pursuant to section 60-3,198 as part of an apportioned fleet shall only be towed by:

(i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(ii) A properly registered local truck;

(iii) A properly registered well-boring apparatus;

(iv) A properly registered commercial motor vehicle or apportionable vehicle;

(v) A dealer-plated vehicle;

(vi) A personal-use dealer-plated vehicle;

(vii) A properly registered bus; or

(viii) A properly registered farm truck; and

(i) A trailer registered as a historical vehicle pursuant to sections 60-3,130 to 60-3,134 shall only be towed by:

(i) A motor vehicle properly registered as a historical vehicle pursuant to sections 60-3,130 to 60-3,134;

(ii) A properly registered passenger car;

(iii) A properly registered commercial motor vehicle or apportionable vehicle; or

(iv) A properly registered local truck.

(2) Nothing in this section shall be construed to waive compliance with the Nebraska Rules of the Road or Chapter 75.

(3) Nothing in this section shall be construed to prohibit any motor vehicle or trailer from displaying dealer license plates or In Transit stickers authorized by section 60-376.

Source: Laws 2007, LB349, § 2; Laws 2011, LB212, § 4; Laws 2016, LB783, § 13; Laws 2018, LB909, § 70; Laws 2019, LB270, § 26; Laws 2022, LB750, § 33.
Operative date July 21, 2022.

Cross References

Nebraska Rules of the Road, see section 60-601.

60-3,226 Mountain Lion Conservation Plates; design.

(1) The department shall design license plates to be known as Mountain Lion Conservation Plates. The department shall create designs reflecting support for the conservation of the mountain lion population. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,227.

(2) One type of Mountain Lion Conservation Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Mountain Lion Conservation Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions

specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Mountain Lion Conservation Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2016, LB474, § 9; Laws 2019, LB356, § 15; Laws 2020, LB944, § 30; Laws 2022, LB750, § 34.
Operative date July 21, 2022.

60-3,232 Choose Life License Plates; design.

(1) The department shall design license plates to be known as Choose Life License Plates. The department shall create designs reflecting support for the protection of Nebraska's children. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,233.

(2) One type of Choose Life License Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Choose Life License Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Choose Life License Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2017, LB46, § 7; Laws 2019, LB356, § 19; Laws 2020, LB944, § 32; Laws 2022, LB750, § 35.
Operative date July 21, 2022.

60-3,233 Choose Life License Plates; application; form; fee; delivery; fee; transfer; procedure; fee.

(1) A person may apply to the department for Choose Life License Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle or trailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Choose Life License Plate for a farm truck with a gross weight of over sixteen tons or a commercial truck or truck-tractor with a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section.

(2)(a) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance of alphanumeric Choose Life License Plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee to the Health and Human Services Cash Fund to supplement federal funds available to the Department of Health and Human Services for the Temporary Assistance for Needy Families program, 42 U.S.C. 601, et seq.

(b) In addition to all other fees required for registration under the Motor Vehicle Registration Act, each application for initial issuance or renewal of personalized message Choose Life License Plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Health and Human Services Cash Fund to supplement federal funds available to the Department of Health and Human Services for the Temporary Assistance for Needy Families program.

(3)(a) When the department receives an application for Choose Life License Plates, the department shall deliver the plates and registration certificate to the applicant by United States mail or to the county treasurer of the county in which the motor vehicle or trailer is registered and the delivery of the plates and registration certificate shall be made through a secure process and system. The department may charge a postage and handling fee in an amount not more than necessary to recover the cost of postage and handling for the specific items mailed to the registrant. The department shall remit the fee to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. The county treasurer shall issue Choose Life License Plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or trailer. If Choose Life License Plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request pursuant to section 60-3,157.

(b) The county treasurer or the department may issue temporary license stickers to the applicant under this section for the applicant to lawfully operate the vehicle pending receipt of the license plates. No charge in addition to the registration fee shall be made for the issuance of a temporary license sticker under this subdivision. The department shall furnish temporary license stickers for issuance by the county treasurer at no cost to the counties. The department may adopt and promulgate rules and regulations regarding the design and issuance of temporary license stickers.

(4) The owner of a motor vehicle or trailer bearing Choose Life License Plates may apply to the county treasurer to have such plates transferred to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period. Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) If the cost of manufacturing Choose Life License Plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Health and Human Services Cash Fund to supplement federal funds available to the Department of Health and Human Services for the Temporary Assistance for Needy Families program shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Choose Life License Plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Health and Human Services Cash Fund to supplement federal funds available to the Department of Health and Human Services for the Temporary Assistance for Needy Families program.

Source: Laws 2017, LB46, § 8; Laws 2019, LB270, § 30; Laws 2019, LB356, § 20; Laws 2022, LB750, § 36.
Operative date July 21, 2022.

60-3,237 Wildlife Conservation Plates; design.

(1) The department shall design license plates to be known as Wildlife Conservation Plates. The department shall create no more than three designs reflecting support for the conservation of Nebraska wildlife, including sandhill cranes, bighorn sheep, and ornate box turtles. Each design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,238.

(2) One type of Wildlife Conservation Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Wildlife Conservation Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Wildlife Conservation Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2019, LB356, § 23; Laws 2020, LB944, § 34; Laws 2022, LB750, § 37.
Operative date July 21, 2022.

60-3,241 Sammy's Superheroes license plates; design.

(1) The department shall design license plates to be known as Sammy's Superheroes license plates for childhood cancer awareness. The design shall include a blue handprint over a yellow ribbon and the words ''childhood cancer awareness''. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,242.

(2) One type of Sammy's Superheroes license plates for childhood cancer awareness shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Sammy's Superheroes license plates for childhood cancer awareness shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Sammy's Superheroes license plates for childhood cancer awareness beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2019, LB356, § 27; Laws 2020, LB944, § 38; Laws 2022, LB750, § 38.
Operative date July 21, 2022.

60-3,243 Support Our Troops Plates; design.

(1) The department shall design license plates to be known as Support Our Troops Plates. The department shall create a design reflecting support for troops from all branches of the armed forces. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,244.

(2) One type of Support Our Troops Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Support Our Troops Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Support Our Troops Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2019, LB138, § 17; Laws 2020, LB944, § 40; Laws 2022, LB750, § 39.
Operative date July 21, 2022.

60-3,245 Donate Life Plates; design.

(1) The department shall design license plates to be known as Donate Life Plates. The design shall support organ and tissue donation, registration as a donor on the Donor Registry of Nebraska, and the federally designated organ procurement organization for Nebraska. The design shall be selected on the

basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,246.

(2) One type of Donate Life Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Donate Life Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Donate Life Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2020, LB944, § 41; Laws 2022, LB750, § 40.
Operative date July 21, 2022.

60-3,247 Down Syndrome Awareness Plates; design.

(1) The department shall design license plates to be known as Down Syndrome Awareness Plates. The design shall include the words ''Down syndrome awareness'' inside a heart-shaped yellow and blue ribbon. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,248.

(2) One type of Down Syndrome Awareness Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Down Syndrome Awareness Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Down Syndrome Awareness Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2020, LB944, § 43; Laws 2022, LB750, § 41.
Operative date July 21, 2022.

60-3,249 Pets for Vets Plates; design.

(1) The department shall design license plates to be known as Pets for Vets Plates. The design shall support veterans and companion or therapy pet animals. The design shall be selected on the basis of limiting the manufacturing

cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,250.

(2) One type of Pets for Vets Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Pets for Vets Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Pets for Vets Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2020, LB944, § 45; Laws 2022, LB750, § 42.
Operative date July 21, 2022.

60-3,251 Support the Arts Plates; design.

(1) The department shall design license plates to be known as Support the Arts Plates. The design shall be selected in consultation with the Nebraska Arts Council and shall support the arts in Nebraska. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,252.

(2) One type of Support the Arts Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of Support the Arts Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue Support the Arts Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2020, LB944, § 47; Laws 2022, LB750, § 43.
Operative date July 21, 2022.

60-3,253 The Good Life Is Outside Plates; design.

(1) The department shall design license plates to be known as The Good Life Is Outside Plates. The design shall reflect the importance of safe walking and biking in Nebraska and the value of our recreational trails. The design shall be selected on the basis of limiting the manufacturing cost of each plate to an

amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department may adopt and promulgate rules and regulations to carry out this section and section 60-3,254.

(2) One type of The Good Life Is Outside Plates shall be alphanumeric plates. The department shall:

(a) Assign a designation up to five characters; and

(b) Not use a county designation.

(3) One type of The Good Life Is Outside Plates shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118, except that a maximum of five characters may be used.

(4) The department shall cease to issue The Good Life Is Outside Plates beginning with the next license plate issuance cycle after the license plate issuance cycle that begins in 2023 pursuant to section 60-3,101 if the total number of registered vehicles that obtained such plates is less than five hundred per year within any prior consecutive two-year period.

Source: Laws 2020, LB944, § 49; Laws 2022, LB750, § 44.
Operative date July 21, 2022.

ARTICLE 4

MOTOR VEHICLE OPERATORS' LICENSES

(e) GENERAL PROVISIONS

Section
60-462. Act, how cited.
60-462.01. Federal regulations; adopted.
60-463. Definitions, where found.
60-470.03. Mobile operator's or driver's license, defined.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-479.01. Fraudulent document recognition training; criminal history record information check; lawful status check; cost.
60-481. Driving rules; publication; copy; available upon request.
60-490. Operators' licenses; state identification cards; expiration; renewal.
60-4,111.01. Storage or compilation of information; retailer; seller; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,115. Fees; allocation; identity security surcharge.
60-4,122. Operator's license; state identification card; renewal procedure; law examination; exceptions; department; powers and duties.
60-4,124. School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty; not eligible for ignition interlock permit.
60-4,130.03. Operator less than twenty-one years of age; driver improvement course; suspension; reinstatement.
60-4,130.04. Commercial driver safety course instructors; requirements; driver safety course; requirements.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

60-4,132. Purposes of sections.
60-4,134. Holder of Class A commercial driver's license; hazardous materials endorsement not required; conditions.

(e) GENERAL PROVISIONS

60-462 Act, how cited.

Sections 60-462 to 60-4,189 shall be known and may be cited as the Motor Vehicle Operator's License Act.

Source: Laws 1937, c. 141, § 31, p. 523; C.S.Supp.,1941, § 60-434; R.S.1943, § 60-402; R.S.1943, (1988), § 60-402; Laws 1989, LB 284, § 2; Laws 1989, LB 285, § 12; Laws 1990, LB 980, § 6; Laws 1991, LB 44, § 1; Laws 1993, LB 105, § 4; Laws 1993, LB 370, § 65; Laws 1993, LB 420, § 1; Laws 1994, LB 211, § 1; Laws 1995, LB 467, § 6; Laws 1996, LB 323, § 1; Laws 1997, LB 210, § 2; Laws 1997, LB 256, § 4; Laws 1998, LB 320, § 1; Laws 2001, LB 38, § 5; Laws 2001, LB 574, § 1; Laws 2003, LB 209, § 1; Laws 2003, LB 562, § 2; Laws 2005, LB 76, § 2; Laws 2006, LB 853, § 6; Laws 2007, LB415, § 1; Laws 2008, LB911, § 1; Laws 2011, LB158, § 1; Laws 2011, LB178, § 2; Laws 2011, LB215, § 1; Laws 2013, LB93, § 1; Laws 2014, LB983, § 2; Laws 2015, LB231, § 19; Laws 2016, LB311, § 1; Laws 2016, LB977, § 13; Laws 2018, LB629, § 1; Laws 2018, LB909, § 73; Laws 2022, LB750, § 45.
Operative date July 21, 2022.

60-462.01 Federal regulations; adopted.

For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, 2022:

The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

Source: Laws 2003, LB 562, § 20; Laws 2004, LB 560, § 36; Laws 2005, LB 76, § 3; Laws 2006, LB 853, § 7; Laws 2006, LB 1007, § 4; Laws 2007, LB239, § 4; Laws 2008, LB756, § 16; Laws 2009, LB331, § 7; Laws 2010, LB805, § 3; Laws 2011, LB178, § 3; Laws 2011, LB212, § 5; Laws 2012, LB751, § 17; Laws 2013, LB35, § 3; Laws 2014, LB776, § 4; Laws 2014, LB983, § 3; Laws 2015, LB313, § 4; Laws 2016, LB929, § 6; Laws 2017, LB263,

§ 62; Laws 2018, LB909, § 74; Laws 2019, LB79, § 11; Laws 2020, LB944, § 51; Laws 2021, LB149, § 9; Laws 2022, LB750, § 46.
Operative date July 21, 2022.

60-463 Definitions, where found.

For purposes of the Motor Vehicle Operator's License Act, the definitions found in sections 60-463.01 to 60-478 shall be used.

Source: Laws 1989, LB 285, § 13; Laws 1993, LB 370, § 66; Laws 1993, LB 420, § 2; Laws 2001, LB 38, § 6; Laws 2007, LB415, § 2; Laws 2008, LB911, § 3; Laws 2014, LB983, § 4; Laws 2015, LB231, § 20; Laws 2016, LB311, § 2; Laws 2022, LB750, § 47.
Operative date July 21, 2022.

60-470.03 Mobile operator's or driver's license, defined.

Mobile operator's or driver's license means an operator's or driver's license electronically stored on or accessed via an electronic device.

Source: Laws 2022, LB750, § 48.
Operative date July 21, 2022.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-479.01 Fraudulent document recognition training; criminal history record information check; lawful status check; cost.

(1) All persons handling source documents or engaged in the issuance of new, renewed, or reissued operators' licenses or state identification cards shall have periodic fraudulent document recognition training.

(2) All persons and agents of the department involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or who have the ability to affect information on such licenses or cards shall be subject to a criminal history record information check, including a check of prior employment references, and a lawful status check as required by 6 C.F.R. part 37, as such part existed on January 1, 2022. Such persons and agents shall provide fingerprints which shall be submitted to the Federal Bureau of Investigation. The bureau shall use its records for the criminal history record information check.

(3) Upon receipt of a request pursuant to subsection (2) of this section, the Nebraska State Patrol shall undertake a search for criminal history record information relating to such applicant, including transmittal of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information concerning the applicant from federal repositories of such information and repositories of such information in other states, if authorized by federal law. The Nebraska State Patrol shall issue a report to the employing public agency that shall include the criminal history record information concerning the applicant. The cost of any background check shall be borne by the employer of the person or agent.

(4) Any person convicted of any disqualifying offense as provided in 6 C.F.R. part 37, as such part existed on January 1, 2022, shall not be involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or involved in any capacity in which such person would have the ability to affect information on such licenses or cards. Any employee or prospective employee of the department shall be provided notice that he or she will undergo such criminal history record information check prior to employment or prior to any involvement with the issuance of operators' licenses or state identification cards.

Source: Laws 2008, LB911, § 8; Laws 2011, LB215, § 4; Laws 2012, LB751, § 18; Laws 2013, LB35, § 4; Laws 2014, LB776, § 5; Laws 2015, LB313, § 5; Laws 2016, LB929, § 7; Laws 2017, LB263, § 63; Laws 2018, LB909, § 76; Laws 2019, LB79, § 12; Laws 2020, LB944, § 52; Laws 2021, LB149, § 10; Laws 2022, LB750, § 49.
Operative date July 21, 2022.

60-481 Driving rules; publication; copy; available upon request.

(1) The director shall publish on the website of the department a summary of the statutory driving rules of this state. Such summary shall contain cautionary and advisory comments as determined by the director, including a description of how to legally operate a motor vehicle in order to avoid arrest.

(2) The director may provide a copy of the summary described in subsection (1) of this section without charge upon request by a member of the public.

Source: Laws 1937, c. 141, § 21, p. 517; C.S.Supp.,1941, § 60-426; R.S.1943, § 60-440; R.S.1943, (1978), § 60-440; Laws 1981, LB 76, § 4; R.S.1943, (1988), § 60-406.08; Laws 1989, LB 285, § 31; Laws 2022, LB750, § 50.
Operative date July 21, 2022.

60-490 Operators' licenses; state identification cards; expiration; renewal.

(1) Operators' licenses issued to persons required to use bioptic or telescopic lenses as provided in section 60-4,118 shall expire on the licensee's birthday in the second year after issuance unless specifically restricted to a shorter renewal period as determined under section 60-4,118.

(2) Except for state identification cards issued to persons less than twenty-one years of age, all state identification cards expire on the cardholder's birthday in the fifth year after issuance. A state identification card issued to a person who is less than twenty-one years of age expires on his or her twenty-first birthday or on his or her birthday in the fifth year after issuance, whichever comes first.

(3) Except as otherwise provided in subsection (1) of this section and section 60-4,147.05 and except for operators' licenses issued to persons less than twenty-one years of age, operators' licenses issued pursuant to the Motor Vehicle Operator's License Act expire on the licensee's birthday in the fifth year after issuance. An operator's license issued to a person less than twenty-one years of age expires on his or her twenty-first birthday. Except as otherwise provided in section 60-4,147.05, the Department of Motor Vehicles shall mail out a renewal notice for each operator's license at least thirty days before the expiration of the operator's license.

(4)(a) The expiration date shall be stated on each operator's license or state identification card.

(b) Except as otherwise provided in section 60-4,147.05, licenses and state identification cards issued to persons who are twenty-one years of age or older which expire under this section may be renewed within a ninety-day period before the expiration date. Any person who is twenty-one years of age or older and who is the holder of a valid operator's license or state identification card may renew his or her license or card prior to the ninety-day period before the expiration date on such license or card if such applicant furnishes proof that he or she will be absent from the state during the ninety-day period prior to such expiration date.

(c) A person who is twenty years of age may apply for an operator's license or a state identification card within sixty days prior to his or her twenty-first birthday. The operator's license or state identification card may be issued within ten days prior to such birthday.

(d) A person who is under twenty years of age and who holds a state identification card may apply for renewal within a ninety-day period prior to the expiration date.

Source: Laws 1989, LB 285, § 34; Laws 1990, LB 742, § 2; Laws 1993, LB 7, § 1; Laws 1998, LB 309, § 3; Laws 1998, LB 320, § 3; Laws 1999, LB 704, § 8; Laws 2001, LB 574, § 7; Laws 2005, LB 1, § 4; Laws 2005, LB 76, § 6; Laws 2006, LB 1008, § 1; Laws 2022, LB750, § 51.
Operative date July 21, 2022.

60-4,111.01 Storage or compilation of information; retailer; seller; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.

(1) The Department of Motor Vehicles, the courts, or law enforcement agencies may store or compile information acquired from an operator's license or a state identification card for their statutorily authorized purposes.

(2) Except as otherwise provided in subsection (3) or (4) of this section, no person having use of or access to machine-readable information encoded on an operator's license or a state identification card shall compile, store, preserve, trade, sell, or share such information. Any person who trades, sells, or shares such information shall be guilty of a Class IV felony. Any person who compiles, stores, or preserves such information except as authorized in subsection (3) or (4) of this section shall be guilty of a Class IV felony.

(3)(a) For purposes of compliance with and enforcement of restrictions on the purchase of alcohol, lottery tickets, and tobacco products, a retailer who sells any of such items pursuant to a license issued or a contract under the applicable statutory provision may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The retailer may store only the following information obtained from the license or card: Age and license or card identification number. The retailer shall post a sign at the point of sale of any of such items stating that the license or card will be scanned and that the age and identification number will be stored. The stored information may only be used by a law enforcement agency for purposes of enforcement of the restrictions on the purchase of

alcohol, lottery tickets, and tobacco products and may not be shared with any other person or entity.

(b) For purposes of compliance with the provisions of sections 28-458 to 28-462, a seller who sells methamphetamine precursors pursuant to such sections may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The seller may store only the following information obtained from the license or card: Name, age, address, type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification. The seller shall post a sign at the point of sale stating that the license or card will be scanned and stating what information will be stored. The stored information may only be used by law enforcement agencies, regulatory agencies, and the exchange for purposes of enforcement of the restrictions on the sale or purchase of methamphetamine precursors pursuant to sections 28-458 to 28-462 and may not be shared with any other person or entity. For purposes of this subsection, the terms exchange, methamphetamine precursor, and seller have the same meanings as in section 28-458.

(c) The retailer or seller shall utilize software that stores only the information allowed by this subsection. A programmer for computer software designed to store such information shall certify to the retailer that the software stores only the information allowed by this subsection. Intentional or grossly negligent programming by the programmer which allows for the storage of more than the age and identification number or wrongfully certifying the software shall be a Class IV felony.

(d) A retailer or seller who knowingly stores more information than authorized under this subsection from the operator's license or state identification card shall be guilty of a Class IV felony.

(e) Information scanned, compiled, stored, or preserved pursuant to subdivision (a) of this subsection may not be retained longer than eighteen months unless required by state or federal law.

(4) In order to approve a negotiable instrument, an electronic funds transfer, or a similar method of payment, a person having use of or access to machine-readable information encoded on an operator's license or a state identification card may:

(a) Scan, compile, store, or preserve such information in order to provide the information to a check services company subject to and in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq., as such act existed on January 1, 2022, for the purpose of effecting, administering, or enforcing a transaction requested by the holder of the license or card or preventing fraud or other criminal activity; or

(b) Scan and store such information only as necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability or to resolve a dispute or inquiry by the holder of the license or card.

(5) Except as provided in subdivision (4)(a) of this section, information scanned, compiled, stored, or preserved pursuant to this section may not be traded or sold to or shared with a third party; used for any marketing or sales purpose by any person, including the retailer who obtained the information; or,

unless pursuant to a court order, reported to or shared with any third party. A person who violates this subsection shall be guilty of a Class IV felony.

Source: Laws 2001, LB 574, § 30; Laws 2010, LB261, § 1; Laws 2011, LB20, § 9; Laws 2019, LB79, § 13; Laws 2020, LB944, § 56; Laws 2021, LB149, § 11; Laws 2022, LB750, § 52.
Operative date July 21, 2022.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,115 Fees; allocation; identity security surcharge.

(1) Fees for operators' licenses and state identification cards shall be collected by department personnel or the county treasurer and distributed according to the table in subsection (2) of this section, except for the ignition interlock permit and associated fees as outlined in subsection (4) of this section and the 24/7 sobriety program permit and associated fees as outlined in subsection (5) of this section. County officials shall remit the county portion of the fees collected to the county treasurer for placement in the county general fund. All other fees collected shall be remitted to the State Treasurer for credit to the appropriate fund.

(2) The fees provided in this subsection in the following dollar amounts apply for operators' licenses and state identification cards.

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
State identification card:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for more than 4 years for person under 21	24.00	2.75	10.25	11.00
Valid for 5 years	24.00	3.50	13.25	7.25
Replacement	11.00	2.75	6.00	2.25
Class O or M operator's license:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for 5 years	24.00	3.50	13.25	7.25
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Provisional operator's permit:				
Original	15.00	2.75	12.25	0

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	15.00	2.75	12.25	0
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPD-learner's permit:				
Original	8.00	.25	5.00	2.75
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPE-learner's permit:				
Original	8.00	.25	5.00	2.75
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
School permit:				
Original	8.00	.25	5.00	2.75
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Farm permit:				
Original or renewal	5.00	.25	0	4.75
Replacement	5.00	.25	0	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Driving permits:				
Employment	45.00	0	5.00	40.00
Medical hardship	45.00	0	5.00	40.00
Replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Commercial driver's license:				
Valid for 1 year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Valid for more than 2 years but not more than 3 years	33.00	1.75	5.00	26.25
Valid for more than 3 years but not more than 4 years	44.00	1.75	5.00	37.25
Valid for 5 years	55.00	1.75	5.00	48.25
Bioptic or telescopic lens restriction:				
Valid for one year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	10.00	1.75	5.00	3.25
CLP-commercial learner's permit:				
Original or renewal	10.00	.25	5.00	4.75
Replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
Seasonal permit:				
Original or renewal	10.00	.25	5.00	4.75
Replacement	10.00	.25	5.00	4.75

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75

(3) If the department issues an operator's license or a state identification card and collects the fees, the department shall remit the county portion of the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4)(a) The fee for an ignition interlock permit shall be forty-five dollars. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Forty dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Ignition Interlock Fund.

(b) The fee for a replacement ignition interlock permit shall be eleven dollars. Two dollars and seventy-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Six dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars and twenty-five cents of the fee shall be remitted to the State Treasurer for credit to the General Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on an ignition interlock permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5)(a) The fee for a 24/7 sobriety program permit shall be forty-five dollars. Twenty-five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Fifteen dollars of the fee shall be remitted to the State Treasurer for credit to the General Fund. Five dollars of the fee shall be remitted to the county treasurer for credit to the county general fund.

(b) The fee for a replacement 24/7 sobriety program permit shall be eleven dollars. Two dollars and seventy-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Six dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars and twenty-five cents of the fee shall be remitted to the State Treasurer for credit to the General Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on a 24/7 sobriety program permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(6) The department and its agents may collect an identity security surcharge to cover the cost of security and technology practices used to protect the identity of applicants for and holders of operators' licenses and state identification cards and to reduce identity theft, fraud, and forgery and counterfeiting of such licenses and cards to the maximum extent possible. The surcharge shall be in addition to all other required fees for operators' licenses and state identification cards. The amount of the surcharge shall be determined by the department.

The surcharge shall not exceed eight dollars. The surcharge shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1929, c. 148, § 7, p. 515; C.S.1929, § 60-407; Laws 1931, c. 101, § 2, p. 272; Laws 1937, c. 148, § 17, p. 515; Laws 1941, c. 128, § 1, p. 483; Laws 1941, c. 176, § 1, p. 687; C.S.Supp.,1941, § 60-407; R.S.1943, § 60-409; Laws 1945, c. 141, § 6, p. 452; Laws 1947, c. 207, § 3, p. 677; Laws 1949, c. 181, § 3, p. 525; Laws 1951, c. 195, § 12, p. 742; Laws 1955, c. 242, § 1, p. 757; Laws 1957, c. 366, § 39, p. 1273; Laws 1961, c. 315, § 7, p. 1004; Laws 1961, c. 316, § 7, p. 1014; Laws 1963, c. 359, § 2, p. 1151; Laws 1967, c. 234, § 3, p. 624; Laws 1976, LB 329, § 2; Laws 1977, LB 90, § 5; Laws 1981, LB 207, § 1; Laws 1985, Second Spec. Sess., LB 5, § 1; R.S.1943, (1988), § 60-409; Laws 1989, LB 285, § 65; Laws 1992, LB 319, § 4; Laws 1993, LB 491, § 12; Laws 1995, LB 467, § 11; Laws 1998, LB 309, § 5; Laws 1998, LB 320, § 5; Laws 1999, LB 704, § 17; Laws 2001, LB 574, § 11; Laws 2005, LB 1, § 5; Laws 2006, LB 1008, § 2; Laws 2008, LB736, § 4; Laws 2008, LB911, § 12; Laws 2009, LB497, § 3; Laws 2011, LB170, § 2; Laws 2011, LB215, § 13; Laws 2011, LB667, § 28; Laws 2014, LB777, § 4; Laws 2014, LB983, § 17; Laws 2016, LB311, § 10; Laws 2018, LB347, § 1; Laws 2021, LB113, § 27; Laws 2021, LB271, § 10; Laws 2022, LB750, § 53. Operative date July 1, 2022.

60-4,122 Operator's license; state identification card; renewal procedure; law examination; exceptions; department; powers and duties.

(1) Except as otherwise provided in subsections (2), (3), and (8) of this section, no original or renewal operator's license shall be issued to any person until such person has demonstrated his or her ability to operate a motor vehicle safely as provided in section 60-4,114.

(2) Except as otherwise provided in this section and section 60-4,127, any person who renews his or her Class O or Class M license shall demonstrate his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 only at the discretion of department personnel, except that a person required to use bioptic or telescopic lenses shall be required to demonstrate his or her ability to drive and maneuver a motor vehicle safely each time he or she renews his or her license.

(3) Any person who renews his or her Class O or Class M license prior to or within one year after its expiration may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state as provided in subdivision (3)(c) of section 60-4,114 if his or her driving record abstract maintained in the computerized records of the department shows that such person's license is not impounded, suspended, revoked, or canceled.

(4) Except for operators' licenses issued to persons required to use bioptic or telescopic lenses, any person who renews his or her operator's license which has been valid for fifteen months or less shall not be required to take any examination required under section 60-4,114.

(5) Any person who renews a state identification card shall appear before department personnel and present his or her current state identification card or shall follow the procedure for electronic renewal in subsection (9) of this

section. Proof of identification shall be required as prescribed in sections 60-484 and 60-4,181 and the information and documentation required by section 60-484.04.

(6)(a) If a nonresident who applies for an initial operator's license in this state presents a physical or mobile valid operator's license from the individual's state of residence, the department may choose not to require such individual to demonstrate knowledge of the motor vehicle laws of this state.

(b) A physical operator's license described in subdivision (a) of this subsection shall be surrendered to the department.

(c) Upon issuing an initial operator's license described in subdivision (a) of this subsection, the department shall notify the state that issued the valid operator's license described in subdivision (a) of this subsection to invalidate such license.

(7) An applicant for an original operator's license may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she has been issued a Nebraska LPD-learner's permit that is valid or has been expired for no more than one year. The written examination shall not be waived if the original operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the Nebraska LPD-learner's permit.

(8)(a) A qualified licensee as determined by the department who is twenty-one years of age or older, whose license expires prior to his or her seventy-second birthday, and who has a digital image and digital signature preserved in the digital system may renew his or her Class O or Class M license twice by electronic means in a manner prescribed by the department using the preserved digital image and digital signature without taking any examination required under section 60-4,114 if such renewal is prior to or within one year after the expiration of the license, if his or her driving record abstract maintained in the records of the department shows that such person's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible. Every licensee, including a licensee who is out of the state at the time of renewal, must apply for renewal in person at least once every sixteen years and have a new digital image and digital signature captured.

(b) In order to allow for an orderly progression through the various types of operators' licenses issued to persons under twenty-one years of age, a qualified holder of an operator's license who is under twenty-one years of age and who has a digital image and digital signature preserved in the digital system may apply for an operator's license by electronic means in a manner prescribed by the department using the preserved digital image and digital signature if the applicant has passed any required examinations prior to application, if his or her driving record abstract maintained in the records of the department shows that such person's operator's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible.

(9) Any person who is twenty-one years of age or older and who has been issued a state identification card with a digital image and digital signature may electronically renew his or her state identification card by electronic means in a manner prescribed by the department using the preserved digital image and digital signature. Every person renewing a state identification card under this

subsection, including a person who is out of the state at the time of renewal, must apply for renewal in person at least once every sixteen years and have a new digital image and digital signature captured.

(10) In addition to services available at driver license offices, the department may develop requirements for using electronic means for online issuance of operators' licenses and state identification cards to qualified holders as determined by the department.

Source: Laws 1967, c. 234, § 6, p. 625; Laws 1984, LB 694, § 1; Laws 1989, LB 284, § 8; R.S.1943, (1988), § 60-411.01; Laws 1989, LB 285, § 72; Laws 1990, LB 369, § 16; Laws 1990, LB 742, § 4; Laws 1990, LB 980, § 10; Laws 1993, LB 370, § 87; Laws 1998, LB 320, § 9; Laws 1999, LB 704, § 23; Laws 2001, LB 387, § 7; Laws 2001, LB 574, § 16; Laws 2008, LB911, § 16; Laws 2011, LB158, § 4; Laws 2011, LB215, § 17; Laws 2014, LB777, § 8; Laws 2018, LB909, § 79; Laws 2019, LB270, § 35; Laws 2022, LB750, § 54.
Operative date July 21, 2022.

60-4,124 School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty; not eligible for ignition interlock permit.

(1) A person who is younger than sixteen years and three months of age but is older than fourteen years and two months of age may be issued a school permit if such person either resides outside a city of the metropolitan, primary, or first class or attends a school which is outside a city of the metropolitan, primary, or first class and if such person has held an LPE-learner's permit for two months. A school permit shall not be issued until such person has demonstrated that he or she is capable of successfully operating a motor vehicle, moped, or motorcycle and has in his or her possession an issuance certificate authorizing the county treasurer to issue a school permit. In order to obtain an issuance certificate, the applicant shall present (a) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (i) the effects of the consumption of alcohol on a person operating a motor vehicle, (ii) occupant protection systems, (iii) risk assessment, and (iv) railroad crossing safety and (b)(i) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (ii) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. The department may waive the written examination if the applicant has been issued an LPE-learner's permit or LPD-learner's permit and if such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPE-learner's permit.

(2) A person holding a school permit may operate a motor vehicle, moped, or motorcycle or an autocycle:

(a) To and from where he or she attends school, or property used by the school he or she attends for purposes of school events or functions, over the most direct and accessible route by the nearest highway from his or her place of residence to transport such person or any family member who resides with such person to attend duly scheduled courses of instruction and extracurricular or school-related activities at the school he or she attends or on property used by the school he or she attends; or

(b) Under the personal supervision of a licensed operator. Such licensed operator shall be at least twenty-one years of age and licensed by this state or another state and shall (i) for all motor vehicles other than autocycles, motorcycles, or mopeds, actually occupy the seat beside the permitholder, (ii) in the case of an autocycle, actually occupy the seat beside or behind the permitholder, or (iii) in the case of a motorcycle, other than an autocycle, or a moped, if the permitholder is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(3) The holder of a school permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subsection shall be accomplished only as a secondary action when the holder of the school permit has been cited or charged with a violation of some other law.

(4) A person who is younger than sixteen years of age but is over fourteen years of age may be issued an LPE-learner's permit, which permit shall be valid for a period of six months. An LPE-learner's permit shall not be issued until such person successfully completes a written examination prescribed by the department and demonstrates that he or she has sufficient powers of eyesight to safely operate a motor vehicle, moped, or motorcycle or an autocycle.

(5)(a) While holding the LPE-learner's permit, the person may operate a motor vehicle on the highways of this state if (i) for all motor vehicles other than autocycles, motorcycles, or mopeds, he or she has seated next to him or her a person who is a licensed operator, (ii) in the case of an autocycle, he or she has seated next to or behind him or her a person who is a licensed operator, or (iii) in the case of a motorcycle, other than an autocycle, or a moped, he or she is within visual contact of and is under the supervision of a person who, in the case of a motorcycle, is a licensed motorcycle operator or, in the case of a moped, is a licensed motor vehicle operator. Such licensed motor vehicle or motorcycle operator shall be at least twenty-one years of age and licensed by this state or another state.

(b) The holder of an LPE-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPE-learner's permit has been cited or charged with a violation of some other law.

(6) Department personnel or the county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 from each successful applicant for a school or LPE-learner's permit. All school permits shall be subject to impoundment or revocation under the terms of section 60-496. Any person who violates the terms of a school permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(7) Any person who holds a permit issued under this section and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit.

Source: Laws 1989, LB 285, § 74; Laws 1998, LB 320, § 11; Laws 2001, LB 387, § 8; Laws 2001, LB 574, § 18; Laws 2005, LB 675, § 4; Laws 2006, LB 853, § 9; Laws 2007, LB415, § 6; Laws 2008, LB911, § 18; Laws 2012, LB751, § 28; Laws 2015, LB231, § 25; Laws 2016, LB311, § 15; Laws 2016, LB814, § 1; Laws 2018, LB909, § 82; Laws 2019, LB269, § 5; Laws 2022, LB750, § 55.
Operative date July 21, 2022.

60-4,130.03 Operator less than twenty-one years of age; driver improvement course; suspension; reinstatement.

(1) Any person less than twenty-one years of age who holds an operator's license or a provisional operator's permit and who has accumulated, within any twelve-month period, a total of six or more points on his or her driving record pursuant to section 60-4,182 shall be notified by the Department of Motor Vehicles of that fact and ordered to attend and successfully complete a driver improvement course consisting of at least four hours of department-approved instruction. Notice shall be sent by regular United States mail to the last-known address as shown in the records of the department. If such person fails to complete the driver improvement course within three months after the date of notification, he or she shall have his or her operator's license suspended by the department.

(2) The director shall issue an order summarily suspending an operator's license until the licensee turns twenty-one years of age. Such order shall be sent by regular United States mail to the last-known address as shown in the records of the department. Such person shall not have his or her operator's license reinstated until he or she (a) has successfully completed the driver improvement course or has attained the age of twenty-one years and (b) has complied with section 60-4,100.01.

Source: Laws 1998, LB 320, § 14; Laws 2001, LB 38, § 35; Laws 2012, LB751, § 31; Laws 2022, LB750, § 56.
Operative date July 21, 2022.

60-4,130.04 Commercial driver safety course instructors; requirements; driver safety course; requirements.

Commercial driver safety course instructors shall possess competence as outlined in rules and regulations adopted and promulgated by the Department of Motor Vehicles. Instructors who teach the department-approved driver safety course in a public school or institution and possess competence as outlined in a driver's education endorsement shall be eligible to sign a form prescribed by the department or electronically submit test results to the department showing successful completion of the driver safety course. Each public school or institution offering a department-approved driver safety course shall be required to obtain a certificate and pay the fee pursuant to section 60-4,130.05.

Source: Laws 1998, LB 320, § 15; Laws 2018, LB909, § 85; Laws 2022, LB750, § 57.
Operative date July 21, 2022.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

60-4,132 Purposes of sections.

The purposes of sections 60-462.01, 60-4,133, and 60-4,137 to 60-4,172 are to implement the requirements mandated by the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, 49 U.S.C. 101 et seq., section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and federal regulations as such acts and regulations existed on January 1, 2022, and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by: (1) Permitting drivers to hold only one operator's license; (2) disqualifying drivers for specified offenses and serious traffic violations; and (3) strengthening licensing and testing standards.

Source: Laws 1989, LB 285, § 82; Laws 1993, LB 7, § 2; Laws 1993, LB 420, § 6; Laws 2002, LB 499, § 1; Laws 2003, LB 562, § 8; Laws 2005, LB 76, § 8; Laws 2011, LB178, § 7; Laws 2014, LB983, § 22; Laws 2018, LB629, § 4; Laws 2018, LB909, § 88; Laws 2019, LB79, § 14; Laws 2020, LB944, § 59; Laws 2021, LB149, § 12; Laws 2022, LB750, § 58.
Operative date July 21, 2022.

60-4,134 Holder of Class A commercial driver's license; hazardous materials endorsement not required; conditions.

In conformance with section 7208 of the federal Fixing America's Surface Transportation Act and 49 C.F.R. 383.3(i), as such section and regulation existed on January 1, 2022, no hazardous materials endorsement authorizing the holder of a Class A commercial driver's license to operate a commercial motor vehicle transporting diesel fuel shall be required if such driver is (1) operating within the state and acting within the scope of his or her employment as an employee of a custom harvester operation, an agrichemical business, a farm retail outlet and supplier, or a livestock feeder and (2) operating a service vehicle that is (a) transporting diesel in a quantity of one thousand gallons or less and (b) clearly marked with a flammable or combustible placard, as appropriate.

Source: Laws 2018, LB909, § 90; Laws 2019, LB79, § 15; Laws 2020, LB944, § 60; Laws 2021, LB149, § 13; Laws 2022, LB750, § 59.
Operative date July 21, 2022.

60-4,138 Commercial drivers' licenses and restricted commercial drivers' licenses; classification.

(1) Commercial drivers' licenses and restricted commercial drivers' licenses shall be issued by the department in compliance with 49 C.F.R. parts 380, 383, 384, and 391, shall be classified as provided in subsection (2) of this section, and shall bear such endorsements and restrictions as are provided in subsections (3) and (4) of this section.

(2) Commercial motor vehicle classifications for purposes of commercial drivers' licenses shall be as follows:

(a) Class A Combination Vehicle — Any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds;

(b) Class B Heavy Straight Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds; and

(c) Class C Small Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds comprising:

(i) Motor vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to section 75-364.

(3) The endorsements to a commercial driver's license shall be as follows:

(a) T — Double/triple trailers;

(b) P — Passenger;

(c) N — Tank vehicle;

(d) H — Hazardous materials;

(e) X — Combination tank vehicle and hazardous materials; and

(f) S — School bus.

(4) The restrictions to a commercial driver's license shall be as follows:

(a) E — No manual transmission equipped commercial motor vehicle;

(b) K — Operation of a commercial motor vehicle only in intrastate commerce;

(c) L — Operation of only a commercial motor vehicle which is not equipped with air brakes;

(d) M — Operation of a commercial motor vehicle which is not a Class A passenger vehicle;

(e) N — Operation of a commercial motor vehicle which is not a Class A or Class B passenger vehicle;

(f) O — No tractor-trailer commercial motor vehicle;

(g) V — Operation of a commercial motor vehicle for drivers with medical variance documentation. The documentation shall be required to be carried on the driver's person while operating a commercial motor vehicle; and

(h) Z — No full air brake equipped commercial motor vehicle.

Source: Laws 1989, LB 285, § 88; Laws 1990, LB 980, § 14; Laws 1993, LB 420, § 8; Laws 1996, LB 938, § 1; Laws 2003, LB 562, § 10; Laws 2006, LB 1007, § 6; Laws 2011, LB178, § 9; Laws 2014, LB983, § 24; Laws 2020, LB944, § 61; Laws 2022, LB750, § 60. Operative date July 21, 2022.

60-4,139.01 School bus endorsement; requirements.

An applicant for a school bus endorsement shall satisfy the following three requirements:

(1) Pass the knowledge and skills test for obtaining a passenger vehicle endorsement;

(2) Have knowledge covering at least the following three topics:

(a) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights, and other warning and passenger safety devices required for school buses by state or federal law or regulation;

(b) Emergency exits and procedures for safely evacuating passengers in an emergency; and

(c) State and federal laws and regulations related to safely traversing highway-rail grade crossings; and

(3) Take a driving skills test in a school bus of the same vehicle group as the school bus the applicant will drive.

Source: Laws 2003, LB 562, § 11; Laws 2022, LB750, § 61.
Operative date July 21, 2022.

60-4,147.02 Hazardous materials endorsement; USA PATRIOT Act requirements.

No endorsement authorizing the driver to operate a commercial motor vehicle transporting hazardous materials shall be issued, renewed, or transferred by the Department of Motor Vehicles unless the endorsement is issued, renewed, or transferred in conformance with the requirements of section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal regulations adopted pursuant thereto as of January 1, 2022, for the issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

Source: Laws 2005, LB 76, § 17; Laws 2006, LB 853, § 12; Laws 2007, LB239, § 5; Laws 2008, LB756, § 17; Laws 2009, LB331, § 10; Laws 2010, LB805, § 7; Laws 2011, LB212, § 6; Laws 2012, LB751, § 35; Laws 2013, LB35, § 5; Laws 2014, LB776, § 6; Laws 2015, LB313, § 6; Laws 2016, LB929, § 8; Laws 2017, LB263, § 67; Laws 2018, LB909, § 89; Laws 2019, LB79, § 16; Laws 2020, LB944, § 63; Laws 2021, LB149, § 14; Laws 2022, LB750, § 62.
Operative date July 21, 2022.

60-4,149.01 Commercial drivers' licenses; law examination; exceptions; department; powers and duties.

(1) A commercial driver's license examiner shall not require the commercial driver's license knowledge examination, except the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement, if the applicant renews his or her commercial driver's license prior to its expiration or within one year after its expiration and if the applicant's driving record abstract maintained in the department's computerized records shows that his or her commercial driver's license is not suspended, revoked, canceled, or disqualified.

(2)(a) If a nonresident who applies for a commercial driver's license in this state presents a physical or mobile valid commercial driver's license from another state, the department may choose not to require such individual to take the commercial driver's license knowledge examination.

(b) Subdivision (a) of this subsection shall not apply to the hazardous material portion of the examination and any knowledge examinations not previously taken for that class of commercial motor vehicle or endorsement.

(c) A physical commercial driver's license described in subdivision (a) of this subsection shall be surrendered to the department.

(d) Upon issuing a commercial driver's license described in subdivision (a) of this subsection, the department shall notify the state that issued the valid commercial driver's license described in subdivision (a) of this subsection to invalidate such license.

Source: Laws 1993, LB 420, § 9; Laws 1996, LB 938, § 3; Laws 1999, LB 704, § 35; Laws 2001, LB 387, § 9; Laws 2005, LB 76, § 13; Laws 2014, LB983, § 37; Laws 2022, LB750, § 63.
Operative date July 21, 2022.

60-4,168 Disqualification; when.

(1) Except as provided in subsections (2) and (3) of this section, a person shall be disqualified from operating a commercial motor vehicle for one year upon his or her first conviction, after April 1, 1992, in this or any other state for:

(a) Operating a commercial motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance or, beginning September 30, 2005, operating any motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance;

(b) Operating a commercial motor vehicle in violation of section 60-4,163 or 60-4,164;

(c) Leaving the scene of an accident involving a commercial motor vehicle operated by the person or, beginning September 30, 2005, leaving the scene of an accident involving any motor vehicle operated by the person;

(d) Using a commercial motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section or, beginning September 30, 2005, using any motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section;

(e) Beginning September 30, 2005, operating a commercial motor vehicle after his or her commercial driver's license has been suspended, revoked, or canceled or the driver is disqualified from operating a commercial motor vehicle; or

(f) Beginning September 30, 2005, causing a fatality through the negligent or criminal operation of a commercial motor vehicle.

(2) Except as provided in subsection (3) of this section, if any of the offenses described in subsection (1) of this section occurred while a person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from operating a commercial motor vehicle for three years.

(3) A person shall be disqualified from operating a commercial motor vehicle for life if, after April 1, 1992, he or she:

(a) Is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents;

(b) Beginning September 30, 2005, used a commercial motor vehicle in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance; or

(c) Used a commercial motor vehicle in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11), as such section existed on January 1, 2022.

(4)(a) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a commercial motor vehicle.

(b) A person is disqualified from operating a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a motor vehicle other than a commercial motor vehicle if the convictions have resulted in the revocation, cancellation, or suspension of the person's operator's license or driving privileges.

(5)(a) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a highway-rail grade crossing shall be disqualified for the period of time specified in subdivision (5)(b) of this section:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b)(i) A person shall be disqualified for not less than sixty days if the person is convicted of a first violation described in this subsection.

(ii) A person shall be disqualified for not less than one hundred twenty days if, during any three-year period, the person is convicted of a second violation described in this subsection in separate incidents.

(iii) A person shall be disqualified for not less than one year if, during any three-year period, the person is convicted of a third or subsequent violation described in this subsection in separate incidents.

(6) A person shall be disqualified from operating a commercial motor vehicle for at least one year if, on or after July 8, 2015, the person has been convicted of fraud related to the issuance of his or her CLP-commercial learner's permit or commercial driver's license.

(7) If the department receives credible information that a CLP-commercial learner's permit holder or a commercial driver's license holder is suspected, but has not been convicted, on or after July 8, 2015, of fraud related to the issuance of his or her CLP-commercial learner's permit or commercial driver's license, the department must require the driver to retake the skills and knowledge tests. Within thirty days after receiving notification from the department that retesting is necessary, the affected CLP-commercial learner's permit holder or commercial driver's license holder must make an appointment or otherwise schedule to take the next available test. If the CLP-commercial learner's permit holder or commercial driver's license holder fails to make an appointment within thirty days, the department must disqualify his or her CLP-commercial learner's permit or commercial driver's license. If the driver fails either the knowledge or skills test or does not take the test, the department must disqualify his or her CLP-commercial learner's permit or commercial driver's license. If the holder of a CLP-commercial learner's permit or commercial driver's license has had his or her CLP-commercial learner's permit or commercial driver's license disqualified, he or she must reapply for a CLP-commercial learner's permit or commercial driver's license under department procedures applicable to all applicants for a CLP-commercial learner's permit or commercial driver's license.

(8) For purposes of this section, controlled substance has the same meaning as in section 28-401.

(9) For purposes of this section, conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law, in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(10) For purposes of this section, serious traffic violation means:

(a) Speeding at or in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 60-6,214 or reckless driving as described in section 60-6,213;

(c) Improper lane change as described in section 60-6,139;

(d) Following the vehicle ahead too closely as described in section 60-6,140;

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person;

(f) Beginning September 30, 2005, operating a commercial motor vehicle without a commercial driver's license;

(g) Beginning September 30, 2005, operating a commercial motor vehicle without a commercial driver's license in the operator's possession;

(h) Beginning September 30, 2005, operating a commercial motor vehicle without the proper class of commercial driver's license and any endorsements, if required, for the specific vehicle group being operated or for the passengers or type of cargo being transported on the vehicle;

(i) Beginning October 27, 2013, texting while driving as described in section 60-6,179.02; and

(j) Using a handheld mobile telephone as described in section 60-6,179.02.

(11) Each period of disqualification imposed under this section shall be served consecutively and separately.

Source: Laws 1989, LB 285, § 118; Laws 1990, LB 980, § 24; Laws 1993, LB 191, § 6; Laws 1993, LB 370, § 93; Laws 1996, LB 323, § 11; Laws 2001, LB 773, § 13; Laws 2002, LB 499, § 3; Laws 2003, LB 562, § 16; Laws 2005, LB 76, § 15; Laws 2012, LB751, § 38; Laws 2014, LB983, § 49; Laws 2016, LB311, § 21; Laws 2016, LB666, § 8; Laws 2017, LB263, § 68; Laws 2020, LB944, § 64; Laws 2021, LB149, § 15; Laws 2022, LB750, § 64.
Operative date July 21, 2022.

(i) COMMERCIAL DRIVER TRAINING SCHOOLS

60-4,174 Director; duties; rules and regulations; Commissioner of Education; assist.

The director shall adopt and promulgate such rules and regulations for the administration and enforcement of sections 60-4,173 to 60-4,179 as are necessary to protect the public. The director or his or her authorized representative shall examine applicants for Driver Training School and Instructor's Licenses, license successful applicants, and inspect school facilities and equipment. The director shall administer and enforce such sections and may call upon the Commissioner of Education for assistance in developing and formulating appropriate rules and regulations.

Source: Laws 1967, c. 380, § 2, p. 1192; R.S.1943, (1988), § 60-409.07; Laws 1989, LB 285, § 124; Laws 2008, LB279, § 2; Laws 2022, LB750, § 65.
Operative date July 21, 2022.

(k) POINT SYSTEM

60-4,183 Point system; revocation of license, when; driver improvement course; employment driving permit or medical hardship driving permit, exception.

Whenever it comes to the attention of the director that any person has, as disclosed by the records of the director, accumulated a total of twelve or more points within any period of two years, as set out in section 60-4,182, the director shall (1) summarily revoke the operator's license of such person and (2) require such person to attend and successfully complete a driver improve-

ment course consisting of at least four hours of instruction approved by the Department of Motor Vehicles.

Such instruction shall be successfully completed before the operator's license may be reinstated. Each person who attends such instruction shall pay the cost of such course.

Such revocation shall be for a period of six months from the date of the signing of the order of revocation or six months from the date of the release of such person from the jail or a Department of Correctional Services adult correctional facility, whichever is the later, unless a longer period of revocation was directed by the terms of the abstract of the judgment of conviction transmitted to the director by the trial court.

Any motor vehicle except a commercial motor vehicle may be operated under an employment driving permit as provided by section 60-4,129 or a medical hardship driving permit as provided by section 60-4,130.01.

Source: Laws 1953, c. 219, § 2, p. 770; Laws 1957, c. 169, § 1, p. 590; Laws 1957, c. 366, § 27, p. 1262; Laws 1957, c. 275, § 1, p. 1002; Laws 1957, c. 165, § 4, p. 584; Laws 1959, c. 174, § 2, p. 627; Laws 1961, c. 315, § 1, p. 997; Laws 1961, c. 316, § 1, p. 1007; Laws 1963, c. 232, § 1, p. 721; Laws 1965, c. 219, § 1, p. 637; Laws 1967, c. 234, § 1, p. 620; Laws 1973, LB 414, § 1; R.S.Supp.,1973, § 39-7,129; Laws 1975, LB 259, § 2; Laws 1975, LB 263, § 1; Laws 1989, LB 285, § 3; Laws 1991, LB 420, § 5; R.S.Supp.,1992, § 39-669.27; Laws 1993, LB 31, § 17; Laws 1993, LB 105, § 2; Laws 1993, LB 370, § 81; Laws 2021, LB113, § 31; Laws 2022, LB750, § 66.
Operative date July 21, 2022.

60-4,188 Driver improvement course; reduce point assessment.

Any person who has fewer than twelve points assessed against his or her driving record under section 60-4,182 may voluntarily enroll in a driver improvement course approved by the Department of Motor Vehicles. Upon notification of successful completion of such a course by the conducting organization, the department shall reduce by two the number of points assessed against such person's driving record within the previous two years. This section shall only apply to persons who have successfully completed such driver improvement course prior to committing any traffic offense for which a conviction and point assessment against their driving record would otherwise result in a total of twelve or more points assessed against their record. No person required to enroll in a driver improvement course pursuant to section 60-4,130, 60-4,130.03, or 60-4,183 shall be eligible for a reduction in points assessed against his or her driving record upon the successful completion of such course. If a person has only one point assessed against his or her record within the previous two years, upon notification of successful completion of such a course by the conducting organization, the department shall reduce one point from such person's driving record. Such reduction shall be allowed only once within a five-year period. Notification of completion of an approved driver improvement course shall be sent to the department, upon successful completion thereof, by the conducting organization. Such course shall consist of at

least four hours of instruction and shall follow such other guidelines as are established by the department.

Source: Laws 1983, LB 204, § 2; Laws 1989, LB 285, § 6; R.S.Supp.,1992, § 39-669.37; Laws 1993, LB 370, § 86; Laws 1998, LB 320, § 20; Laws 2021, LB113, § 32; Laws 2022, LB750, § 67.
Operative date July 21, 2022.

ARTICLE 5

MOTOR VEHICLE SAFETY RESPONSIBILITY

(a) DEFINITIONS

Section
60-501. Terms, defined.

(a) DEFINITIONS

60-501 Terms, defined.

For purposes of the Motor Vehicle Safety Responsibility Act, unless the context otherwise requires:

(1) Department means Department of Motor Vehicles;

(2) Former military vehicle means a motor vehicle that was manufactured for use in any country's military forces and is maintained to accurately represent its military design and markings, regardless of the vehicle's size or weight, but is no longer used, or never was used, by a military force;

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

(4) Judgment means any judgment which shall have become final by the expiration of the time within which an appeal might have been perfected without being appealed, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, (a) upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or (b) upon a cause of action on an agreement of settlement for such damages;

(5) License means any license issued to any person under the laws of this state pertaining to operation of a motor vehicle within this state;

(6) Low-speed vehicle means a (a) four-wheeled motor vehicle (i) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (ii) whose gross vehicle weight rating is less than three thousand pounds, and (iii) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2022, or (b) three-wheeled motor vehicle (i) whose maximum speed attainable is not more than twenty-five miles per hour on a paved, level surface, (ii) whose gross vehicle

weight rating is less than three thousand pounds, and (iii) which is equipped with a windshield and an occupant protection system. A motorcycle with a sidecar attached is not a low-speed vehicle;

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

(8) Motor vehicle means any self-propelled vehicle which is designed for use upon a highway, including trailers designed for use with such vehicles, minitrucks, and low-speed vehicles. Motor vehicle includes a former military vehicle. Motor vehicle does not include (a) mopeds as defined in section 60-637, (b) traction engines, (c) road rollers, (d) farm tractors, (e) tractor cranes, (f) power shovels, (g) well drillers, (h) every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, (i) electric personal assistive mobility devices as defined in section 60-618.02, (j) off-road designed vehicles, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663, and (k) bicycles as defined in section 60-611;

(9) Nonresident means every person who is not a resident of this state;

(10) Nonresident's operating privilege means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him or her of a motor vehicle or the use of a motor vehicle owned by him or her in this state;

(11) Operator means every person who is in actual physical control of a motor vehicle;

(12) Owner means a person who holds the legal title of a motor vehicle, or in the event (a) a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or (b) a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of the act;

(13) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(14) Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (a) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (b) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (c) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident;

(15) Registration means registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(16) State means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada; and

(17) The forfeiture of bail, not vacated, or of collateral deposited to secure an appearance for trial shall be regarded as equivalent to conviction of the offense charged.

Source: Laws 1949, c. 178, § 1, p. 482; Laws 1957, c. 366, § 42, p. 1275; Laws 1959, c. 298, § 1, p. 1107; Laws 1959, c. 299, § 1, p. 1123; Laws 1971, LB 644, § 4; Laws 1972, LB 1196, § 4; Laws 1973, LB 365, § 1; Laws 1979, LB 23, § 14; Laws 1983, LB 253, § 1; Laws 1987, LB 80, § 11; Laws 1993, LB 121, § 385; Laws 1993, LB 370, § 94; Laws 2002, LB 1105, § 447; Laws 2010, LB650, § 32; Laws 2011, LB289, § 26; Laws 2012, LB898, § 3; Laws 2012, LB1155, § 15; Laws 2015, LB95, § 9; Laws 2016, LB929, § 9; Laws 2017, LB263, § 70; Laws 2018, LB909, § 92; Laws 2019, LB79, § 17; Laws 2019, LB156, § 13; Laws 2019, LB270, § 39; Laws 2020, LB944, § 66; Laws 2021, LB149, § 16; Laws 2022, LB750, § 68.
Operative date July 21, 2022.

ARTICLE 6

NEBRASKA RULES OF THE ROAD

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

60-628.01 Low-speed vehicle, defined.

Low-speed vehicle means a (1) four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2022, or (2) three-wheeled motor vehicle (a) whose maximum speed attainable is not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) which is equipped with a windshield and an occupant protection system. A motorcycle with a sidecar attached is not a low-speed vehicle.

Source: Laws 2011, LB289, § 31; Laws 2016, LB929, § 10; Laws 2017, LB263, § 72; Laws 2018, LB909, § 95; Laws 2019, LB79, § 18;

Laws 2019, LB270, § 40; Laws 2020, LB944, § 67; Laws 2021, LB149, § 17; Laws 2022, LB750, § 69.
Operative date July 21, 2022.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-699 Accidents; reports required of operators and owners; when; supplemental reports; reports of peace officers open to public inspection; limitation on use as evidence; confidential information; violation; penalty.

(1) The operator of any vehicle involved in an accident resulting in injuries or death to any person or damage to the property of any one person, including such operator, to an apparent extent that equals or exceeds one thousand five hundred dollars shall within ten days forward a report of such accident to the Department of Transportation. Such report shall not be required if the accident is investigated by a peace officer. If the operator is physically incapable of making the report, the owner of the motor vehicle involved in the accident shall, within ten days from the time he or she learns of the accident, report the matter in writing to the Department of Transportation. The Department of Transportation or Department of Motor Vehicles may require operators involved in accidents to file supplemental reports of accidents upon forms furnished by it whenever the original report is insufficient in the opinion of either department. The operator or the owner of the motor vehicle shall make such other and additional reports relating to the accident as either department requires. Such records shall be retained for the period of time specified by the State Records Administrator pursuant to the Records Management Act.

(2) The report of accident required by this section shall be in two parts. Part I shall be in such form as the Department of Transportation may prescribe and shall disclose full information concerning the accident. Part II shall be in such form as the Department of Motor Vehicles may prescribe and shall disclose sufficient information to disclose whether or not the financial responsibility requirements of the Motor Vehicle Safety Responsibility Act are met through the carrying of liability insurance.

(3) Upon receipt of a report of accident, the Department of Transportation shall determine the reportability and classification of the accident and enter all information into a computerized database. Upon completion, the Department of Transportation shall electronically send Part II of the report to the Department of Motor Vehicles for purposes of section 60-506.01.

(4) Such reports shall be without prejudice. Except as provided in section 84-712.05, a report regarding an accident made by a peace officer, made to or filed with a peace officer in the peace officer's office or department, or filed with or made by or to any other law enforcement agency of the state shall be open to public inspection, but an accident report filed by the operator or owner of a motor vehicle pursuant to this section shall not be open to public inspection. Date of birth information, excluding the year of birth, and operator's license number information of an operator or owner included in any report required under this section shall be confidential and shall not be a public record under section 84-712.01. Year of birth or age information of an operator or owner included in any report required under this section shall not be confidential and shall be a public record under section 84-712.01. Nothing in this section prohibits a peace officer or a law enforcement agency from disclosing the age of an operator or owner included in any report required

under this section. The fact that a report by an operator or owner has been so made shall be admissible in evidence solely to prove compliance with this section, but no such report or any part of or statement contained in the report shall be admissible in evidence for any other purpose in any trial, civil or criminal, arising out of such accidents nor shall the report be referred to in any way or be any evidence of the negligence or due care of either party at the trial of any action at law to recover damages.

(5) The failure by any person to report an accident as provided in this section or to correctly give the information required in connection with the report shall be a Class V misdemeanor.

Source: Laws 1931, c. 110, § 29, p. 315; C.S.Supp.,1941, § 39-1160; R.S.1943, § 39-764; Laws 1951, c. 120, § 1, p. 531; Laws 1953, c. 215, § 1, p. 761; Laws 1961, c. 189, § 2, p. 580; Laws 1961, c. 319, § 1, p. 1019; Laws 1973, LB 417, § 1; R.S.Supp.,1973, § 39-764; Laws 1985, LB 94, § 2; R.S.1943, (1988), § 39-6,104.04; Laws 1993, LB 370, § 195; Laws 1993, LB 575, § 24; Laws 2003, LB 185, § 4; Laws 2017, LB263, § 73; Laws 2017, LB339, § 186; Laws 2021, LB174, § 30; Laws 2022, LB750, § 70.
Operative date July 21, 2022.

Cross References

Motor Vehicle Safety Responsibility Act, see section 60-569.
Records Management Act, see section 84-1220.

(u) OCCUPANT PROTECTION SYSTEMS AND THREE-POINT SAFETY BELT SYSTEMS

60-6,265 Occupant protection system and three-point safety belt system, defined.

For purposes of sections 60-6,266 to 60-6,273:

(1) Occupant protection system means a system utilizing a lap belt, a shoulder belt, or any combination of belts installed in a motor vehicle which (a) restrains drivers and passengers and (b) conforms to Federal Motor Vehicle Safety Standards, 49 C.F.R. 571.207, 571.208, 571.209, and 571.210, as such standards existed on January 1, 2022, or, as a minimum standard, to the federal motor vehicle safety standards for passenger restraint systems applicable for the motor vehicle's model year; and

(2) Three-point safety belt system means a system utilizing a combination of a lap belt and a shoulder belt installed in a motor vehicle which restrains drivers and passengers.

Source: Laws 1993, LB 370, § 361; Laws 2004, LB 227, § 1; Laws 2006, LB 853, § 19; Laws 2007, LB239, § 6; Laws 2008, LB756, § 21; Laws 2009, LB331, § 11; Laws 2015, LB231, § 33; Laws 2018, LB42, § 1; Laws 2019, LB79, § 19; Laws 2020, LB944, § 68; Laws 2021, LB149, § 18; Laws 2022, LB750, § 71.
Operative date July 21, 2022.

ARTICLE 14
MOTOR VEHICLE INDUSTRY LICENSING

60-1403 Board; hearing officer; investigators; powers and duties; seal; records; authentication; review of action; when.

(1) The board may:

(a) Regulate the issuance and revocation of licenses in accordance with and subject to the Motor Vehicle Industry Regulation Act;

(b) Perform all acts and duties provided for in the act necessary to the administration and enforcement of the act;

(c) Make and enforce rules and regulations relating to the administration of but not inconsistent with the act; and

(d) Employ a hearing officer who shall conduct preliminary hearings on behalf of the board and make recommendations to the board on any issue or matter which the board deems proper.

(2) The board shall adopt a seal, which may be either an engraved or ink stamp seal, with the words Nebraska Motor Vehicle Industry Licensing Board and such other devices as the board may desire included on the seal by which it shall authenticate the acts of its office. Copies of all records and papers in the office of the board under the hand and seal of its office shall be received in evidence in all cases equally and with like effect as the original.

(3) Investigators employed by the board may enter upon and inspect the facilities, the required records, and any vehicles, trailers, or motorcycles found in any licensed motor vehicle, motorcycle, or trailer dealer's established place or places of business.

(4) With respect to any action taken by the board, if a controlling number of the members of the board are active participants in the vehicle market in which the action is taken, the chairperson shall review the action taken and, upon completion of such review, modify, alter, approve, or reject the board's action.

Source: Laws 1957, c. 280, § 3, p. 1015; Laws 1967, c. 394, § 3, p. 1229; Laws 1971, LB 768, § 4; Laws 1994, LB 850, § 1; Laws 1995, LB 564, § 3; Laws 2010, LB816, § 55; Laws 2016, LB977, § 26; Laws 2022, LB1148, § 1.
Effective date July 21, 2022.

60-1413 Disciplinary actions; procedure.

(1) Before the board denies any license or any registration as described in section 60-1417.02, revokes or suspends any such license or registration, places a licensee or registrant on probation, or assesses an administrative fine under

section 60-1411.02, the board, or hearing officer employed by the board, shall give the applicant, licensee, registrant, or violator a hearing on the matter unless the hearing is waived upon agreement between the applicant, licensee, registrant, or violator and the executive director, with the approval of the board. As a condition of the waiver, the applicant, licensee, registrant, or violator shall accept the fine or other administrative action. If the hearing is not waived, the board shall, at least thirty days prior to the date set for the hearing, notify the party in writing. Such notice in writing shall contain an exact statement of the charges against the party and the date and place of hearing. The party shall have full authority to be heard in person or by counsel before the board, or hearing officer employed by the board, in reference to the charges. The written notice may be served by delivery personally to the party or by mailing the notice by registered or certified mail to the last-known business address of the party. If the applicant is a dealer's agent, the board shall also notify the dealer employing or contracting with him or her or whose employ he or she seeks to enter by mailing the notice to the dealer's last-known business address. A stenographic record of all testimony presented at the hearings shall be made and preserved pending final disposition of the complaint.

(2) When the licensee fails to maintain a bond as provided in section 60-1419, an established place of business, or liability insurance as prescribed by subsection (3) of section 60-1407.01, the license shall immediately expire. The executive director shall notify the licensee personally or by mailing the notice by registered or certified mail to the last-known address of the licensee that his or her license is revoked until a bond as required by section 60-1419 or liability insurance as prescribed by subsection (3) of section 60-1407.01 is furnished and approved in which event the license may be reinstated.

(3) Upon notice of the revocation or suspension of the license, the licensee shall immediately surrender the expired license to the executive director or his or her representative. If the license is suspended, the executive director or his or her representative shall return the license to the licensee at the time of the conclusion of the period of suspension. Failure to surrender the license as required in this section shall subject the licensee to the penalties provided in section 60-1416.

Source: Laws 1957, c. 280, § 13, p. 1022; Laws 1963, c. 365, § 10, p. 1177; Laws 1967, c. 394, § 8, p. 1235; Laws 1971, LB 768, § 15; Laws 1978, LB 248, § 9; Laws 1984, LB 825, § 23; Laws 1993, LB 106, § 2; Laws 1995, LB 564, § 7; Laws 1999, LB 632, § 5; Laws 2003, LB 498, § 9; Laws 2017, LB346, § 10; Laws 2022, LB1148, § 2.
Effective date July 21, 2022.

60-1414 Denial, revocation, or suspension of license or registration; hearing; attendance of witness; production of books and papers; effect.

In the preparation and conduct of such hearings, the members of the board and executive director, or hearing officer employed by the board, shall have the power to require the attendance and testimony of any witness and the production of any papers or documents in order to assure a fair trial. They may sign and issue subpoenas therefor and administer oaths and examine witnesses and take any evidence they deem pertinent to the determination of the charges. Any witnesses so subpoenaed shall be entitled to the same fees as prescribed by law

in judicial proceedings in the district court of this state in a civil action and mileage at the same rate provided in section 81-1176 for state employees. The payment of such fees and mileage must be out of and kept within the limits of the funds provided for the administration of the board. The party against whom such charges may be filed shall have the right to obtain from the executive director a subpoena for any witnesses which he or she may desire at such hearing and depositions may be taken as in civil court cases in the district court. Any information obtained from the books and records of the person complained against may not be used against the person complained against as the basis for a criminal prosecution under the laws of this state.

Source: Laws 1957, c. 280, § 14, p. 1022; Laws 1971, LB 768, § 16; Laws 1981, LB 204, § 101; Laws 1984, LB 825, § 24; Laws 2022, LB1148, § 3.
Effective date July 21, 2022.

60-1417.02 Auction; registration of seller; exception.

(1) Except as otherwise provided in subsection (5) of this section, any person who engages in or attempts to engage in the selling of motor vehicles or trailers at an auction licensed pursuant to the Motor Vehicle Industry Regulation Act shall register to do so. Registration shall be made on a form provided by the auction dealer and approved by the board. A copy of the registration shall serve as proof of registration for the calendar year. The registration information shall be made available and accessible to the board by the auction dealer within seventy-two hours after the registrant has met the registration requirements and such registration is issued. Such registration information shall be maintained and made accessible to the board by the auction dealer for two years. It shall be the duty of the auction dealer to ensure that no seller participates in any sales activities until and unless registration has been received by the auction dealer or unless such seller is otherwise licensed under the act.

(2) The information required on the registration form shall include, but not be limited to, the following: (a) The legal name of the registrant; (b) the registrant's current mailing address and telephone number; (c) the business name and address of the person with whom the registrant is associated; and (d) whether or not the registrant is bonded.

(3) The registration form shall be signed by the registrant and an authorized representative of the auction and shall be notarized by a notary public.

(4) Any person who is convicted of any violation of the act pursuant to section 60-1411.02 may be denied the right to be registered at all licensed auctions of this state following a hearing before the board, or hearing officer employed by the board, as prescribed in section 60-1413.

(5) A licensed motor vehicle dealer may conduct an auction of excess inventory of used vehicles without being licensed as an auction dealer or registered under this section if the auction conforms to the requirements of this subsection. The licensed motor vehicle dealer shall conduct the auction upon the licensed premises of the dealer, shall sell only used motor vehicles, trailers, or manufactured homes, shall sell only to motor vehicle dealers licensed in Nebraska, shall not sell any vehicles on consignment, and shall not sell any vehicles directly to the public.

Source: Laws 1984, LB 825, § 29; Laws 1999, LB 340, § 2; Laws 2010, LB816, § 71; Laws 2013, LB164, § 2; Laws 2022, LB1148, § 4.
Effective date July 21, 2022.

60-1427 Franchise; termination; noncontinuance; change community; additional dealership; application; hearing; burden of proof.

Upon hearing, the franchisor shall have the burden of proof to establish that under the Motor Vehicle Industry Regulation Act the franchisor should be granted permission to terminate or not continue the franchise, to change the franchisee's community, or to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership.

Nothing contained in the act shall be construed to require or authorize any investigation by the board of any matter before the board under the provisions of sections 60-1420 to 60-1435. Upon hearing, the board, or hearing officer employed by the board, shall hear the evidence introduced by the parties. The hearing officer employed by the board shall make a recommendation to the board solely upon the record so made. The board shall make its decision solely upon the record so made.

Source: Laws 1971, LB 768, § 27; Laws 1972, LB 1335, § 14; Laws 2010, LB816, § 75; Laws 2011, LB477, § 5; Laws 2022, LB1148, § 5.
Effective date July 21, 2022.

60-1428 Franchise; discovery; inspection; rules of civil procedure.

The rules of civil procedure relating to discovery and inspection shall apply to hearings held under the Motor Vehicle Industry Regulation Act, and the board may issue orders to give effect to such rules.

If issues are raised which would involve violations of any state or federal antitrust or price-fixing law, all discovery and inspection proceedings which would be available under such issues in a state or federal court action shall be available to the parties to the hearing, and the board may issue orders to give effect to such proceedings.

Evidence which would be admissible under the issues in a state or federal court action shall be admissible in a hearing held by the board or hearing officer employed by the board. The board shall apportion all costs between the parties.

Source: Laws 1971, LB 768, § 28; Laws 2010, LB816, § 76; Laws 2022, LB1148, § 6.
Effective date July 21, 2022.

60-1435 Franchise; appeal.

Any party to a hearing before the board, or hearing officer employed by the board, may appeal any final order entered in such hearing, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1971, LB 768, § 35; Laws 1988, LB 352, § 108; Laws 2022, LB1148, § 7.
Effective date July 21, 2022.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 15
DEPARTMENT OF MOTOR VEHICLES

Section
60-1515. Department of Motor Vehicles Cash Fund; use; legislative intent.

60-1515 Department of Motor Vehicles Cash Fund; use; legislative intent.

(1) The Legislature hereby finds and declares that a statewide system for the collection, storage, and transfer of data on vehicle titles and registration and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in vehicle titling and registration. The Legislature hereby finds and declares that the electronic issuance of operators' licenses and state identification cards using a digital system as described in section 60-484.01 and the cooperation of state and local government in implementing such a system is essential to the efficient operation of state and local government in issuing operators' licenses and state identification cards.

(2) It is therefor the intent of the Legislature that the Department of Motor Vehicles shall use a portion of the fees appropriated by the Legislature to the Department of Motor Vehicles Cash Fund as follows:

(a) To pay for the cost of issuing motor vehicle titles and registrations on a system designated by the department. The costs shall include, but not be limited to, software and software maintenance, programming, processing charges, and equipment including such terminals, printers, or other devices as deemed necessary by the department after consultation with the county to support the issuance of motor vehicle titles and registrations. The costs shall not include the cost of county personnel or physical facilities provided by the counties;

(b) To fund the centralization of renewal notices for motor vehicle registration and to furnish to the counties the certificate of registration forms specified in section 60-390. The certificate of registration form shall be prescribed by the department;

(c) To pay for the costs of an operator's license system as specified in sections 60-484.01 and 60-4,119 and designated by the department. The costs shall be limited to such terminals, printers, software, programming, and other equipment or devices as deemed necessary by the department to support the issuance of such licenses and state identification cards in the counties and by the department; and

(d) To pay for the motor vehicle insurance database created under section 60-3,136.

(3) The department shall utilize three dollars of each fee allocated to the Department of Motor Vehicles Cash Fund from state identification cards valid for five years and Class O or M operators' licenses valid for five years to open and operate an additional operators' licensing service center.

Source: Laws 1993, LB 491, § 19; Laws 1995, LB 467, § 17; Laws 2001, LB 574, § 31; Laws 2002, LB 488, § 6; Laws 2005, LB 274, § 258; Laws 2013, LB207, § 6; Laws 2022, LB750, § 72.
Operative date July 1, 2022.

ARTICLE 27
MANUFACTURER'S WARRANTY DUTIES

Section
60-2705. Dispute settlement procedure; effect; director; duties.

60-2705 Dispute settlement procedure; effect; director; duties.

The Director of Motor Vehicles shall adopt standards for an informal dispute settlement procedure which substantially comply with the provisions of 16 C.F.R. part 703, as such part existed on January 1, 2022.

If a manufacturer has established or participates in a dispute settlement procedure certified by the Director of Motor Vehicles within the guidelines of such standards, the provisions of section 60-2703 concerning refunds or replacement shall not apply to any consumer who has not first resorted to such a procedure.

Source: Laws 1983, LB 155, § 5; Laws 2019, LB79, § 20; Laws 2020, LB944, § 73; Laws 2021, LB149, § 19; Laws 2022, LB750, § 73. Operative date July 21, 2022.

ARTICLE 29
UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT

Section
60-2909.01. Disclosure; purposes authorized.

60-2909.01 Disclosure; purposes authorized.

The department and any officer, employee, agent, or contractor of the department having custody of a motor vehicle record shall, upon the verification of identity and purpose of a requester, disclose and make available the requested motor vehicle record, including the sensitive personal information in the record, other than the social security number, for the following purposes:

(1) For use by any federal, state, or local governmental agency, including any court or law enforcement agency, in carrying out the agency's functions or by a private person or entity acting on behalf of a governmental agency in carrying out the agency's functions;

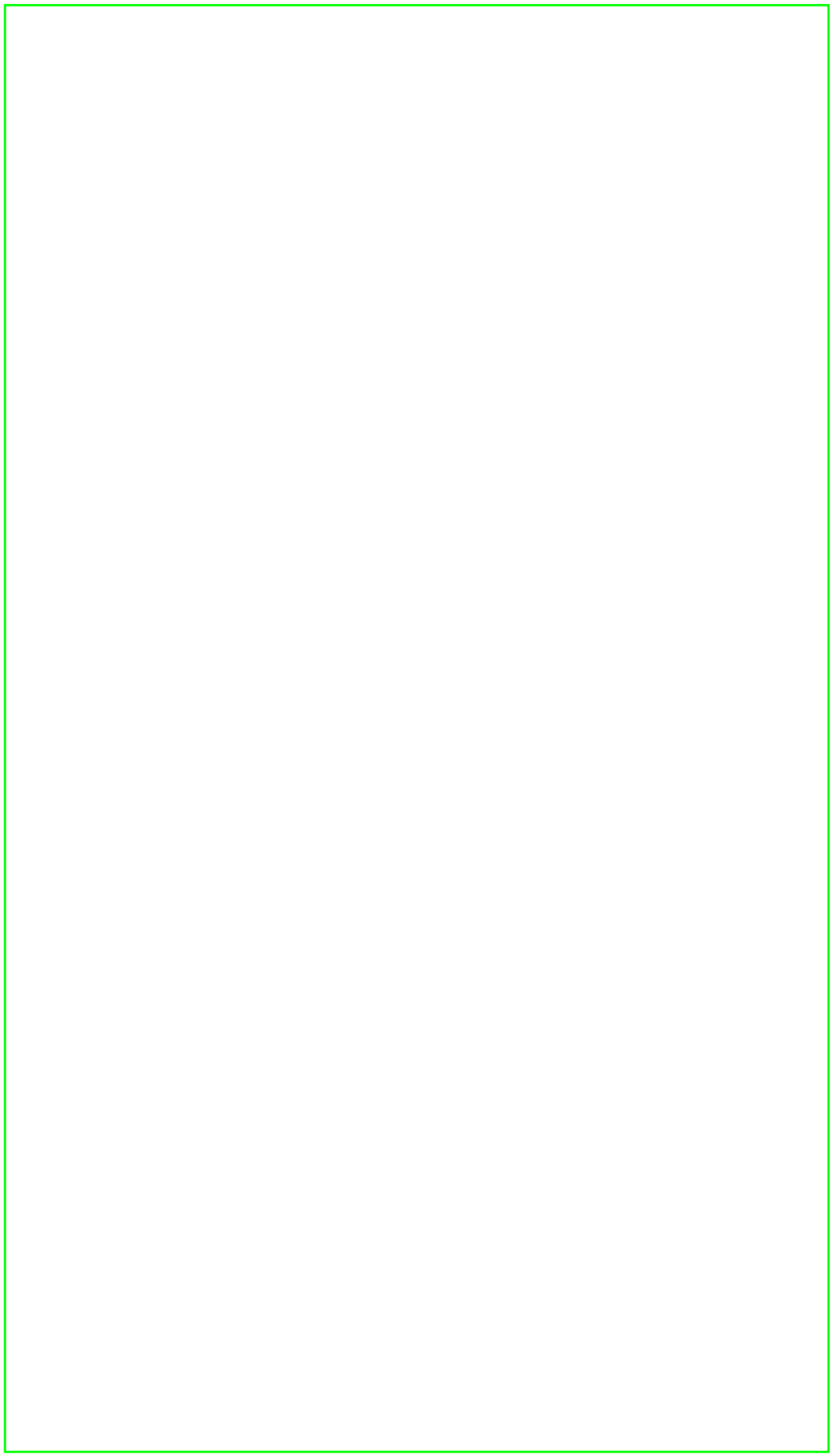
(2) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or governmental agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body;

(3) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;

(4) For use by an employer or the employer's agent or insurer to obtain or verify information relating to a holder of a commercial driver's license or CLP-commercial learner's permit that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., as such act existed on January 1, 2022, or pursuant to sections 60-4,132 and 60-4,141; and

(5) For use by employers of a holder of a commercial driver's license or CLP-commercial learner's permit and by the Commercial Driver License Information System as provided in section 60-4,144.02 and 49 C.F.R. 383.73, as such regulation existed on January 1, 2022.

Source: Laws 2000, LB 1317, § 14; Laws 2011, LB178, § 20; Laws 2014, LB983, § 59; Laws 2019, LB79, § 21; Laws 2020, LB944, § 74; Laws 2021, LB149, § 20; Laws 2022, LB750, § 74.
Operative date July 21, 2022.



CHAPTER 61
NATURAL RESOURCES

Article.
2. Department of Natural Resources. 61-206 to 61-229.
3. Perkins County Canal Project. 61-301 to 61-305.
4. Lake Development District. 61-401 to 61-405.

ARTICLE 2
DEPARTMENT OF NATURAL RESOURCES

Section
61-206. Department of Natural Resources; jurisdiction; rules and regulations; hearings; orders; powers and duties.
61-218. Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.
61-222. Water Sustainability Fund; created; use; investment.
61-224. Critical Infrastructure Facilities Cash Fund; created; use; investment; transfers.
61-225. State flood mitigation plan; legislative findings.
61-226. State flood mitigation plan; scope.
61-227. State flood mitigation plan; plan development group; engage federal, state, and local agencies and other sources.
61-228. State flood mitigation plan; department; duties.
61-229. State flood mitigation plan; report.

61-206 Department of Natural Resources; jurisdiction; rules and regulations; hearings; orders; powers and duties.

(1) The Department of Natural Resources is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. The department may adopt and promulgate rules and regulations governing matters coming before it. It may refuse to allow any water to be used by claimants until their rights have been determined and made of record. It may request information relative to irrigation and water power works from any county, irrigation, or power officers and from any other persons. It may have hearings on complaints, petitions, or applications in connection with any of such matters. Such hearings shall be had at the time and place designated by the department. The department shall have power to certify official acts, compel attendance of witnesses, take testimony by deposition as in suits at law, and examine books, papers, documents, and records of any county, party, or parties interested in any of the matters mentioned in this section or have such examinations made by its qualified representative and shall make and preserve a true and complete transcript of its proceedings and hearings. If a final decision is made without a hearing, a hearing shall be held at the request of any party to the proceeding if the request is made within thirty days after the decision is rendered. If a hearing is held at the request of one or more parties, the department may require each such requesting party and each person who requests to be made a

party to such hearing to pay the proportional share of the cost of such transcript. Upon any hearing, the department shall receive any evidence relevant to the matter under investigation and the burden of proof shall be upon the person making the complaint, petition, and application. After such hearing and investigation, the department shall render a decision in the premises in writing and shall issue such order or orders duly certified as it may deem necessary.

(2) The department shall serve as the official agency of the state in connection with water resources development, soil and water conservation, flood prevention, watershed protection, and flood control.

(3) The department shall:

(a) Offer assistance as appropriate to the supervisors or directors of any subdivision of government with responsibilities in the area of natural resources conservation, development, and use in the carrying out of any of their powers and programs;

(b) Keep the supervisors or directors of each such subdivision informed of the activities and experience of all other such subdivisions and facilitate cooperation and an interchange of advice and experience between such subdivisions;

(c) Coordinate the programs of such subdivisions so far as this may be done by advice and consultation;

(d) Secure the cooperation and assistance of the United States, any of its agencies, and agencies of this state in the work of such subdivisions;

(e) Disseminate information throughout the state concerning the activities and programs of such subdivisions;

(f) Plan, develop, and promote the implementation of a comprehensive program of resource development, conservation, and utilization for the soil and water resources of this state in cooperation with other local, state, and federal agencies and organizations;

(g) When necessary for the proper administration of the functions of the department, rent or lease space outside the State Capitol; and

(h) Assist such local governmental organizations as villages, cities, counties, and natural resources districts in securing, planning, and developing information on flood plains to be used in developing regulations and ordinances on proper use of these flood plains.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 14, p. 839; C.S.1922, § 8433; C.S.1929, § 81-6314; R.S.1943, § 46-209; Laws 1957, c. 197, § 1, p. 695; Laws 1959, c. 219, § 1, p. 766; Laws 1981, LB 109, § 1; Laws 1984, LB 897, § 2; Laws 1984, LB 1106, § 36; Laws 1991, LB 772, § 4; Laws 1995, LB 350, § 1; R.S.1943, (1998), § 46-209; Laws 2000, LB 900, § 6; Laws 2004, LB 962, § 102; Laws 2008, LB727, § 1; Laws 2019, LB319, § 3.

61-218 Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.

(1) The Water Resources Cash Fund is created. The fund shall be administered by the Department of Natural Resources. Any money in the fund available

for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, (d) made available by any department or agency of the United States if so directed by such department or agency, (e) allocated pursuant to section 81-15,175, and (f) received by the state for settlement of claims regarding Colorado's past use of water under the Republican River Compact.

(3) The fund shall be expended by the department (a) to aid management actions taken to reduce consumptive uses of water or to enhance streamflows or ground water recharge in river basins, subbasins, or reaches which are deemed by the department overappropriated pursuant to section 46-713 or fully appropriated pursuant to section 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement, (b) for purposes of projects or proposals described in the grant application as set forth in subdivision (2)(h) of section 81-15,175, and (c) to the extent funds are not expended pursuant to subdivisions (a) and (b) of this subsection, the department may conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in sections 46-713 to 46-718 and 46-739 and any requirements of an interstate compact or decree or formal state contract or agreement. The fund shall not be used to pay for administrative expenses or any salaries for the department or any political subdivision.

(4) It is the intent of the Legislature that three million three hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2011-12 through FY2022-23, except that for FY2012-13 it is the intent of the Legislature that four million seven hundred thousand dollars be transferred from the General Fund to the Water Resources Cash Fund. It is the intent of the Legislature that the State Treasurer credit any money received from any Republican River Compact settlement to the Water Resources Cash Fund in the fiscal year in which it is received.

(5)(a) Expenditures from the Water Resources Cash Fund may be made to natural resources districts eligible under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement and shall require a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity. The department shall, no later than August 1 of each year, beginning in 2007, determine the amount of funding that will be made available to natural resources districts from the Water Resources Cash Fund and notify natural resources districts of this determination. The department shall adopt and promulgate rules and regulations governing application for and use of the Water Resources Cash Fund by natural resources districts. Such rules and regulations shall, at a minimum, include the following components:

(i) Require an explanation of how the planned activity will achieve a sustainable balance of consumptive water uses or will assure compliance with an interstate compact or decree or a formal state contract or agreement as required by section 46-715 and the controls, rules, and regulations designed to carry out the activity; and

(ii) A schedule of implementation of the activity or its components, including the local match as set forth in subdivision (5)(a) of this section.

(b) Any natural resources district that fails to implement and enforce its controls, rules, and regulations as required by section 46-715 shall not be eligible for funding from the Water Resources Cash Fund until it is determined by the department that compliance with the provisions required by section 46-715 has been established.

(6) The Department of Natural Resources shall submit electronically an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year. The report shall provide:

(a) Details regarding the use and cost of activities carried out by the department; and

(b) Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.

(7)(a) Prior to the application deadline for fiscal year 2011-12, the Department of Natural Resources shall apply for a grant of nine million nine hundred thousand dollars from the Nebraska Environmental Trust Fund, to be paid out in three annual installments of three million three hundred thousand dollars. The purposes listed in the grant application shall be consistent with the uses of the Water Resources Cash Fund provided in this section and shall be used to aid management actions taken to reduce consumptive uses of water, to enhance streamflows, to recharge ground water, or to support wildlife habitat in any river basin determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713.

(b) If the application is granted, funds received from such grant shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund for the purpose of supporting the projects set forth in the grant application. The department shall include in its grant application documentation that the Legislature has authorized a transfer of three million three hundred thousand dollars from the General Fund into the Water Resources Cash Fund for each of fiscal years 2011-12 and 2012-13 and has stated its intent to transfer three million three hundred thousand dollars to the Water Resources Cash Fund for fiscal year 2013-14.

(c) It is the intent of the Legislature that the department apply for an additional three-year grant that would begin in fiscal year 2014-15, an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2017-18, and an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2020-21 if the criteria established in subsection (4) of section 81-15,175 are achieved.

(8) The department shall establish a subaccount within the Water Resources Cash Fund for the accounting of all money received as a grant from the Nebraska Environmental Trust Fund as the result of an application made pursuant to subsection (7) of this section. At the end of each calendar month, the department shall calculate the amount of interest earnings accruing to the subaccount and shall notify the State Treasurer who shall then transfer a like

amount from the Water Resources Cash Fund to the Nebraska Environmental Trust Fund.

Source: Laws 2007, LB701, § 25; Laws 2009, First Spec. Sess., LB3, § 39; Laws 2010, LB689, § 1; Laws 2010, LB993, § 1; Laws 2011, LB229, § 1; Laws 2012, LB782, § 87; Laws 2012, LB950, § 1; Laws 2017, LB331, § 30; Laws 2018, LB945, § 15; Laws 2019, LB298, § 15.

Cross References

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

61-222 Water Sustainability Fund; created; use; investment.

The Water Sustainability Fund is created in the Department of Natural Resources. The fund shall be used in accordance with the provisions established in sections 2-1506 to 2-1513 and for costs directly related to the administration of the fund. The Legislature shall not appropriate or transfer money from the Water Sustainability Fund for any other purpose, except that transfers may be made from the Water Sustainability Fund to the Department of Natural Resources Cash Fund and as a one-time transfer to the General Fund as described in this section.

The Water Sustainability Fund shall consist of money transferred to the fund by the Legislature, other funds as appropriated by the Legislature, and money donated as gifts, bequests, or other contributions from public or private entities. Funds made available by any department or agency of the United States may also be credited to the fund if so directed by such department or agency. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

It is the intent of the Legislature that twenty-one million dollars be transferred from the General Fund to the Water Sustainability Fund in fiscal year 2014-15 and that eleven million dollars be transferred from the General Fund to the Water Sustainability Fund each fiscal year beginning in fiscal year 2015-16.

The State Treasurer shall transfer one hundred seventy-five thousand dollars from the Water Sustainability Fund to the Department of Natural Resources Cash Fund on or before June 30, 2021, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

The State Treasurer shall transfer four hundred twenty-five thousand dollars from the Water Sustainability Fund to the Department of Natural Resources Cash Fund on or before June 30, 2021, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

The State Treasurer shall transfer five hundred thousand dollars from the Water Sustainability Fund to the General Fund on or before June 30, 2021, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

The State Treasurer shall transfer four hundred seventy-five thousand dollars from the Water Sustainability Fund to the Department of Natural Resources Cash Fund on or before June 30, 2022, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

The State Treasurer shall transfer four hundred seventy-five thousand dollars from the Water Sustainability Fund to the Department of Natural Resources Cash Fund on or before June 30, 2023, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2014, LB906, § 7; Laws 2015, LB661, § 31; Laws 2020, LB1009, § 4; Laws 2021, LB384, § 9; Laws 2021, LB507, § 6.

Cross References

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

61-224 Critical Infrastructure Facilities Cash Fund; created; use; investment; transfers.

There is hereby created the Critical Infrastructure Facilities Cash Fund in the Department of Natural Resources. The fund shall consist of funds appropriated or transferred by the Legislature. The fund shall be used by the Department of Natural Resources (1) to provide a grant to a natural resources district to offset costs related to soil and water improvements intended to protect critical infrastructure facilities within the district which includes military installations, transportation routes, and wastewater treatment facilities and (2) to provide a grant to an irrigation district for reimbursement of costs related to temporary repairs to the main canal and tunnels of an interstate irrigation system which experienced a failure. Any funds remaining after all such project costs have been completely funded shall be transferred to the General Fund. Transfers may be made from the Critical Infrastructure Facilities Cash Fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer three hundred eighty-four thousand two hundred twenty-two dollars plus any accrued interest through April 5, 2018, from the Critical Infrastructure Facilities Cash Fund to the General Fund on or before June 30, 2019, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services. Any money in the Critical Infrastructure Facilities Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, and any interest earned by the fund shall be credited to the General Fund.

Source: Laws 2016, LB957, § 21; Laws 2018, LB945, § 16; Laws 2020, LB1009, § 5.

Cross References

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

61-225 State flood mitigation plan; legislative findings.

The Legislature finds and declares that the State of Nebraska experienced a historic flood event in 2019. This flood event significantly impacted numerous communities and individual Nebraskans. Coordination and communication

between state and local entities implementing flood mitigation strategies is essential to maximize federal funds for flood mitigation efforts.

Source: Laws 2020, LB632, § 9.

61-226 State flood mitigation plan; scope.

The Department of Natural Resources shall develop a state flood mitigation plan as a stand-alone document to be annexed into the state hazard mitigation plan maintained by the Nebraska Emergency Management Agency. Such plan shall be structured in accordance with Federal Emergency Management Agency guidelines, and shall be comprehensive, collaborative, and statewide in scope with opportunities for input from diverse stakeholders.

Source: Laws 2020, LB632, § 10.

61-227 State flood mitigation plan; plan development group; engage federal, state, and local agencies and other sources.

The Department of Natural Resources shall convene a plan development group which shall be housed and staffed for administrative purposes within such department. The Department of Natural Resources shall engage with federal, state, and local agency and community stakeholders in the development of the state flood mitigation plan, including, but not limited to, the Department of Transportation, the Department of Environment and Energy, the Department of Economic Development, the Department of Agriculture, the Nebraska Emergency Management Agency, natural resources districts, the United States Department of Agriculture, the United States Army Corps of Engineers, the United States Geological Survey, the Federal Emergency Management Agency, the University of Nebraska, representatives of counties, municipalities, and other political subdivisions, and the Natural Resources Committee of the Legislature. The Department of Natural Resources may engage other sources to provide technical expertise as needed.

Source: Laws 2020, LB632, § 11.

61-228 State flood mitigation plan; department; duties.

The Department of Natural Resources shall:

(1) Evaluate the flood issues that occurred in 2019, and identify cost-effective flood mitigation strategies that should be adopted to reduce the disruption of lives and livelihoods and prioritize making Nebraska communities more resilient;

(2) Identify opportunities to implement flood hazard mitigation strategies with the intent to reduce the impact of flood events;

(3) Work to improve knowledge and understanding of available recovery resources while identifying potential gaps in current disaster program delivery;

(4) Identify potential available funding sources that can be accessed to improve the resilience of the state through flood mitigation and post-flood disaster recovery. The funding sources shall include, but not be limited to, assistance from (a) the Federal Emergency Management Agency's Flood Mitigation Assistance Grant Program, Building Resilient Infrastructure and Communities Grant Program, Hazard Mitigation Grant Program, Public Assistance Program, and Individual Assistance Program, (b) the United States Department of Housing and Urban Development's Community Development Block Grant

Program and Community Development Block Grant Disaster Recovery Program, and (c) programs of the United States Department of Agriculture's Natural Resources Conservation Service. Identification of such funding sources shall be in addition to grants and cost-sharing programs available through other agencies that support flood hazard mitigation planning in communities;

(5) Compile a centralized list of critical infrastructure and state-owned facilities and identify those with the highest risk of flooding. In compiling such list, the Department of Natural Resources shall consult and collaborate with other state and local agencies that have information that identifies vulnerable facilities;

(6) Evaluate state laws, rules, regulations, policies, and programs related to flood hazard mitigation and development in flood hazard-prone areas to support the state's administration of the Federal Emergency Management Agency's National Flood Insurance Program, Community Rating System, and Risk Mapping, Assessment, and Planning Program;

(7) Examine existing law and, if necessary, recommend statutory or administrative changes to help ensure collaboration and coordination between state and local entities in statewide flood mitigation planning; and

(8) Hold two public hearings, one prior to the first state flood mitigation plan development meeting and one prior to the completion of such plan. Notice of each hearing shall be published at least thirty days prior to the hearing date.

Source: Laws 2020, LB632, § 12.

61-229 State flood mitigation plan; report.

The state flood mitigation plan shall be completed and reported to the Governor and electronically to the Legislature on or before July 1, 2022.

Source: Laws 2020, LB632, § 13.

ARTICLE 3

PERKINS COUNTY CANAL PROJECT

Section
61-301. Act, how cited.
61-302. Legislative findings and declarations.
61-303. Department of Natural Resources; powers and duties.
61-304. Conflict of interest, prohibited.
61-305. Perkins County Canal Project Fund; created; use; investment; study; required.

61-301 Act, how cited.

Sections 61-301 to 61-304 shall be known and may be cited as the Perkins County Canal Project Act.

Source: Laws 2022, LB1015, § 1.
Effective date July 21, 2022.

61-302 Legislative findings and declarations.

(1) The Legislature finds that it is essential to the economic prosperity, health, and welfare of the people of the State of Nebraska, and to the environmental health of the entire Platte River Basin, to protect Nebraska's full entitlement to the flows of the South Platte River as provided for in the South Platte River Compact. The South Platte River Compact is the law of Nebraska

and of the United States that specifically authorizes Nebraska to develop a canal and associated storage facilities for the diversion of water from the South Platte River for beneficial use in Nebraska.

(2) The Legislature declares that a canal and associated storage facilities, which shall be known as the Perkins County Canal Project, shall be developed, constructed, managed, and operated under the authority of the State of Nebraska consistent with the South Platte River Compact and pursuant to the Perkins County Canal Project Act.

Source: Laws 2022, LB1015, § 2.
Effective date July 21, 2022.

61-303 Department of Natural Resources; powers and duties.

The Department of Natural Resources shall have the necessary authority to develop, construct, manage, and operate the Perkins County Canal Project consistent with the terms of the South Platte River Compact and pursuant to the Perkins County Canal Project Act. The department's powers under the act shall include: (a) Contracting for services, (b) acquiring permits, (c) acquiring and owning real property, (d) acquiring, holding, and exercising water rights, (e) employing personnel, (f) accepting grants, loans, donations, gifts, bequests, or other contributions from any person or entity, public or private, including any funds made available by any department or agency of the United States, (g) managing and expending such funds as are made available to it from the Perkins County Canal Project Fund, and (h) any other necessary functions consistent with the compact and pursuant to the act in protecting Nebraska's full entitlement to flows of the South Platte River. For purposes of the Perkins County Canal Project Act, the Department of Natural Resources is authorized to acquire real estate or access thereto in the name of the State of Nebraska by the use of eminent domain as provided under section 76-725. The department is also authorized to resolve all disputes that may arise, including the initiation or defense of legal actions of any kind, as necessary to achieve the purposes of the act.

Source: Laws 2022, LB1015, § 3.
Effective date July 21, 2022.

61-304 Conflict of interest, prohibited.

(1) An individual listed in subsection (2) of this section or his or her immediate family member shall not, directly or indirectly, hold a financial interest in any entity which is party to a contract or have a financial interest in the ownership or lease of any property relating to the development, construction, management, or operation of the Perkins County Canal Project.

(2) This section shall apply to:

(a) Any elected official in the executive branch of state government. This section shall apply to such official while he or she is in office and for two years after he or she leaves office; and

(b) Any member of the Legislature.

(3) For purposes of this section, immediate family member means a spouse, child, sibling, or parent and includes the spouse of any child, sibling, or parent.

Source: Laws 2022, LB1015, § 4.
Effective date July 21, 2022.

61-305 Perkins County Canal Project Fund; created; use; investment; study; required.

(1) The Perkins County Canal Project Fund is created. The fund shall be administered by the Department of Natural Resources. The State Treasurer shall credit to the fund any money transferred by the Legislature and such grants, loans, donations, gifts, bequests, or other money received from any federal or state agency or public or private source for use by the department for the canal project. Any money in the Perkins County Canal Project Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any investment earnings from investment of money in the fund shall be credited to the fund.

(2)(a) The department shall use the fund for design, engineering, permitting, and options to purchase land related to building a canal as outlined by the South Platte River Compact and to contract with an independent firm for the purposes of completing a study of such canal. The study shall include, but may not be limited to, the following:

(i) Costs of completion of a canal and adjoining reservoirs as outlined in the South Platte River Compact;

(ii) A timeline for completion of a canal and adjoining reservoirs as outlined in the South Platte River Compact;

(iii) A cost-effectiveness study examining alternatives, including alternatives that may reduce environmental or financial impacts; and

(iv) The impacts of the canal on drinking water supplies for the cities of Lincoln and Omaha.

(b) The department shall provide the findings of such study electronically to the Clerk of the Legislature and present the findings at a public hearing held by the Appropriations Committee of the Legislature on or before December 31, 2022.

Source: Laws 2022, LB1012, § 4.
Effective date April 5, 2022.

Cross References

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

ARTICLE 4

LAKE DEVELOPMENT DISTRICT

Section
61-401. Act, how cited.
61-402. Legislative findings and declarations.
61-403. Department of Natural Resources; powers and duties; legislative intent; contract proposals; selection of land; conflict-of-interest provisions.
61-404. Annexation prohibited.
61-405. Jobs and Economic Development Initiative Fund; created; use; investment; studies required.

61-401 Act, how cited.

Sections 61-401 to 61-404 shall be known and may be cited as the Jobs and Economic Development Initiative Act and may also be referred to as the JEDI Act.

Source: Laws 2022, LB1023, § 1.
Effective date April 19, 2022.

61-402 Legislative findings and declarations.

The Legislature finds and declares as follows:

(1) The future vibrancy of the people, communities, and businesses of Nebraska depends on reliable sources of water;

(2) While it is in the state's best interest to retain control over its water supplies, much of the state's water resources are currently underutilized;

(3) In 2019, the state experienced historic flooding along the Platte River which caused loss of life and over one billion dollars in damage to private and public property and infrastructure;

(4) Well-planned flood control is critical to the future of the people, communities, and businesses of Nebraska;

(5) In light of the disruption from the COVID-19 pandemic and the trend toward a remote workforce around the country, people around the country are rethinking where they want to work, live, and raise a family. As people consider where to live, access to sustainable water resources and outdoor recreational opportunities will be important considerations in making Nebraska a competitive choice for the future;

(6) The state's lakes and rivers help Nebraskans enjoy the water resources in our state and make Nebraska an even more attractive place to live and raise a family;

(7) The state's water resources provide economic benefits to the people, communities, and businesses of Nebraska by helping to attract visitors from other states and boosting local economies;

(8) In 2021, the Legislature passed LB406, which established the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature. The committee was tasked with conducting studies on:

(a) The need to protect public and private property, including use of levee systems, enhance economic development, and promote private investment and the creation of jobs along the Platte River and its tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska;

(b) The need to provide for public safety, public infrastructure, land-use planning, recreation, and economic development in the Lake McConaughy region of Keith County, Nebraska; and

(c) The socioeconomic conditions, recreational and tourism opportunities, and public investment necessary to enhance economic development and to catalyze private investment in the region in Knox County, Nebraska, that lies north of State Highway 12 and extends to the South Dakota border and includes Lewis and Clark Lake and Niobrara State Park;

(9) After considerable study, the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee identified potential opportunities within the floodway near the Platte River that could be used to

build a combined reservoir of approximately three thousand six hundred surface acres, or greater, in or near a county having a population of at least one hundred thousand but not more than three hundred thousand inhabitants. Such a reservoir could be built without a dam of a Platte River channel and without negatively impacting any existing municipalities, their surrounding communities, or any economic development already occurring in such areas;

(10) It is in the public interest to construct a lake at or near this location. Such a lake would provide flood control by providing additional off-channel storage during flood events and public recreational opportunities that would benefit generations of Nebraskans, similar to the recreational opportunities provided by Lake McConaughy, Lewis and Clark Lake, and Eugene T. Mahoney State Park;

(11) In addition to the primary purposes of providing flood control and public recreational opportunities that will benefit the public, building a lake will provide the collateral benefit of economic development opportunities;

(12) It is in the public interest, and the purpose of the Jobs and Economic Development Initiative Act, that private parties contribute to the cost of constructing and developing the lake and that the state seek out donations and investments from private parties to fund such construction and development;

(13) It is in the public interest, and the purpose of the act, that the state (a) manage the construction and development of the lake in a manner that encourages private donations and investments, including through the use of public-private partnerships, (b) maintain sufficient oversight to protect the state's investment in the lake, and (c) retain ownership of the lake as an asset for Nebraskans; and

(14) It is in the public interest, and the purpose of the act, that the lake, and the land near or adjacent thereto, be developed in a thoughtful and planned manner by the state and be free from control of political subdivisions or municipalities to further the act's purposes of providing flood control, recreational opportunities, and orderly development of the project.

Source: Laws 2022, LB1023, § 2.
Effective date April 19, 2022.

61-403 Department of Natural Resources; powers and duties; legislative intent; contract proposals; selection of land; conflict-of-interest provisions.

(1) The Department of Natural Resources is granted all power necessary to carry out the purposes of the Jobs and Economic Development Initiative Act, including, but not limited to, the power to:

(a) Purchase, sell, or lease land;

(b) Enter into contracts, including, but not limited to, contracts relating to the provision of construction services, management services, legal services, auditor services, and other consulting services or advice as the department may require in the performance of its duties; and

(c) Enter into agreements with natural resources districts to accomplish the purposes of the act. In any such agreement, a natural resources district may use the full powers granted to it by law.

(2) It is the intent of the Legislature that the department engage private parties and entities to construct and develop the lake and enter into contracts or public-private partnerships that the department deems advantageous to the

construction and development of the lake, and land adjacent thereto, and to advance the purposes of the act.

(3) Notwithstanding any other provision of law, the department shall give preference to:

(a) Contract proposals relating to the development or management of the lake from a Nebraska nonprofit corporation whose board of directors include at least four directors who are appointed by the Governor with the approval of a majority of the Legislature, one representative of the Game and Parks Commission who is a nonvoting, ex officio member of such board of directors, and one member of the Legislature who is appointed by the Executive Board of the Legislative Council and who is a nonvoting, ex officio member of such board of directors. All such directors must agree to be bound by the conflict-of-interest provisions in sections 49-1493 to 49-14,104. Any such nonprofit corporation shall be bound by the Open Meetings Act and sections 84-712 to 84-712.09 and shall publicly let contracts valued in excess of twenty-five thousand dollars; and

(b) Contract proposals which provide for a public-private partnership with the state in constructing, developing, or managing the lake.

(4) The department is granted authority to select the land upon which the lake will be built. In making such selection, the following shall apply:

(a) The land shall be located in or near a county having a population of at least one hundred thousand but not more than three hundred thousand inhabitants and within the flood plain or floodway of the Platte River;

(b) Preference shall be given to locations that were materially underwater when the Platte River flooded in 2019;

(c) It is the intent of the Legislature that the lake be at least three thousand six hundred surface acres in size;

(d) No dam shall be constructed on the main channel of the Platte River in order to construct the lake; and

(e) No city or village, or any part thereof, shall be flooded in order to construct the lake.

(5) The department is granted authority to designate the land selected for the lake under subsection (4) of this section, and land near or adjacent thereto, as the Lake Development District.

(6) The department may, in the performance of its duties, seek input and advice from any natural resources district that encompasses any of the area included in the Lake Development District.

(7) It is the intent of the Legislature that the department engage local stakeholders as the department carries out its duties under this section.

(8) The land selected for the lake shall be owned by the state, and the department shall ensure that the general public has complete access to the lake. No private entity involved in the constructing, developing, or managing of the lake shall designate any portion of the lake for exclusively private use. Nothing in this subsection shall preclude reasonable limitations on the number of people using the lake, a marina, or any other access point so long as such limitation does not restrict access to a designated class of private parties.

(9) Neither the Director of Natural Resources nor any employee of the Department of Natural Resources shall have a financial interest, either personally or through an immediate family member, in any purchase, sale, or lease of

real property relating to the construction or development of the lake or in any contract entered into by the department relating to the construction, development, or management of the lake. For purposes of this subsection, immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild.

Source: Laws 2022, LB1023, § 3.
Effective date April 19, 2022.

Cross References

Open Meetings Act, see section 84-1407.

61-404 Annexation prohibited.

Notwithstanding any other provision of law, no land within the Lake Development District, as designated by the Department of Natural Resources pursuant to section 61-403, shall be annexed.

Source: Laws 2022, LB1023, § 4.
Effective date April 19, 2022.

61-405 Jobs and Economic Development Initiative Fund; created; use; investment; studies required.

(1) The Jobs and Economic Development Initiative Fund is created. The fund shall be administered by the Department of Natural Resources. The State Treasurer shall credit to the fund any money transferred to the fund by the Legislature and such donations, gifts, bequests, or other money received from any federal or state agency or public or private source. The fund shall be used for water and recreational projects pursuant to the Jobs and Economic Development Initiative Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Any investment earnings from investment of money in the fund shall be credited to the fund.

(2) An amount, not to exceed twenty million dollars, shall be available for site selection costs, feasibility and public water supply studies, and flood mitigation costs of the Department of Natural Resources related to any projects pursuant to the Jobs and Economic Development Initiative Act. The Department of Natural Resources shall, in cooperation with impacted communities, including, but not limited to, any city of the primary class and metropolitan utilities district, contract with an independent consultant to conduct a study on the consequences of any lake located in the Lower Platte River Basin to the public water supply of such communities. Such study shall consider all aspects of water quality, water quantity, and water infrastructure, and any other issues necessary to protect the public water supply, including the impact to future water supply opportunities to the impacted communities.

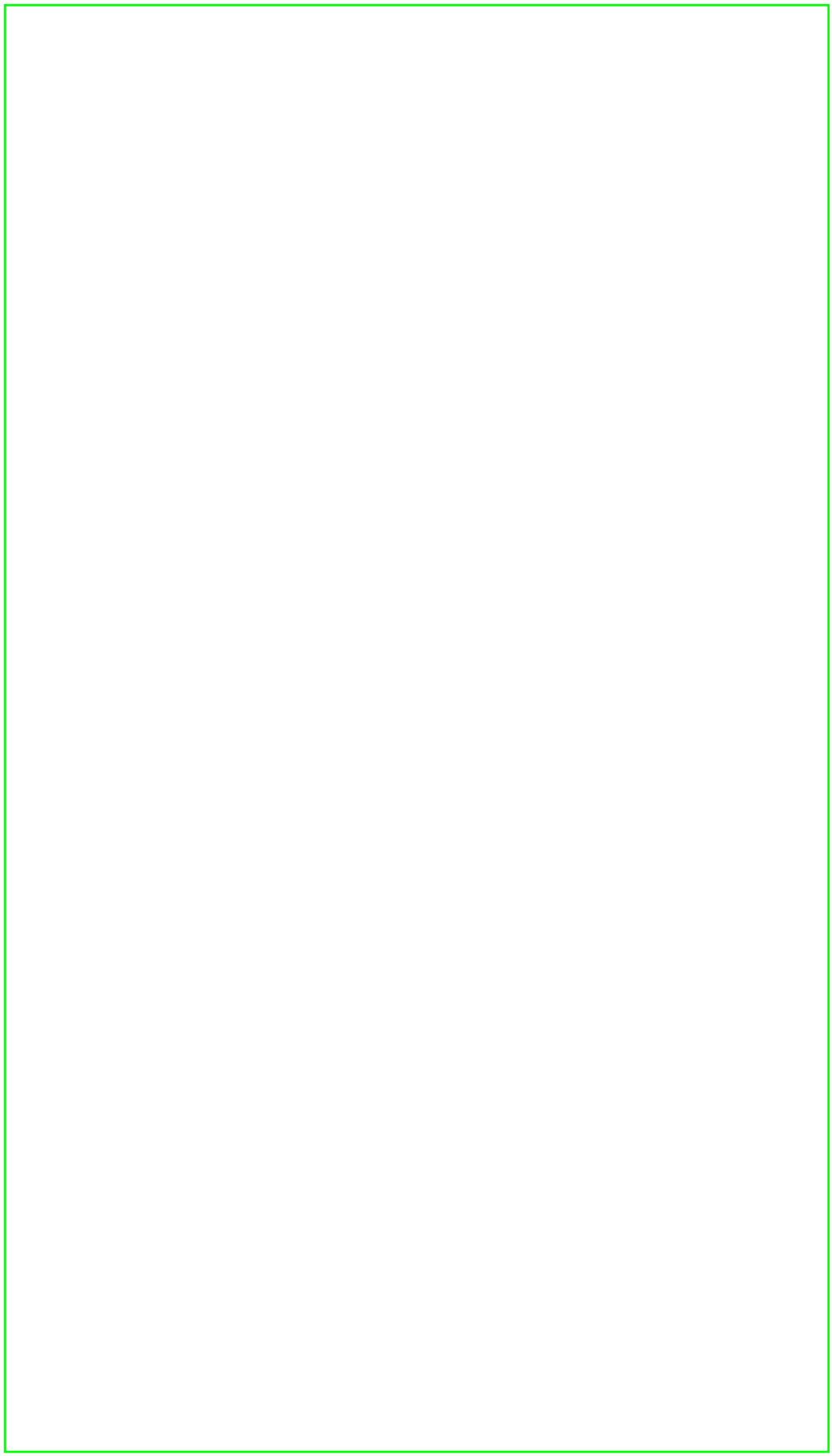
(3) No funds shall be expended for any project, other than those enumerated in subsection (2) of this section, from the Jobs and Economic Development Initiative Fund unless the Director of Natural Resources certifies to the budget administrator of the budget division of the Department of Administrative Services that the Department of Natural Resources has conducted any environmental, hydrological, or other feasibility studies the director deems necessary to establish the feasibility of any projects pursuant to the Jobs and Economic

Development Initiative Act and that, based on the results of such studies, the director has deemed the projects feasible.

Source: Laws 2022, LB1012, § 7.
Effective date April 5, 2022.

Cross References

Jobs and Economic Development Initiative Act, see section 61-401.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.



CHAPTER 62
NEGOTIABLE INSTRUMENTS

Article.
3. Miscellaneous Provisions. 62-301.

ARTICLE 3
MISCELLANEOUS PROVISIONS

Section
62-301. Holidays, enumerated; federal holiday schedule observed; exceptions; bank holidays.

62-301 Holidays, enumerated; federal holiday schedule observed; exceptions; bank holidays.

(1) For the purposes of the Uniform Commercial Code and section 62-301.01, the following days shall be holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the last Monday in May; Juneteenth National Independence Day, June 19; Independence Day, July 4; Labor Day, the first Monday in September; Indigenous Peoples' Day and Columbus Day, the second Monday in October; Veterans Day, November 11, and the federally recognized holiday therefor, or either of them; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; and Christmas Day, December 25. If any such holiday falls on Sunday, the following Monday shall be a holiday. If the date designated by the state for observance of any legal holiday enumerated in this section, except Veterans Day, is different from the date of observance of such holiday pursuant to a federal holiday schedule, the federal holiday schedule shall be observed.

(2) Any bank doing business in this state may, by a brief written notice at, on, or near its front door, fully dispense with or restrict, to such extent as it may determine, the hours within which it will be open for business.

(3) Any bank may close on Saturday if it states such fact by a brief written notice at, on, or near its front door. When such bank will, in observance of such a notice, not be open for general business, such day shall, with respect to the particular bank, be the equivalent of a holiday as fully as if such day were listed in subsection (1) of this section, and any act authorized, required, or permitted to be performed at, by, or with respect to such bank which will, in observance of such notice, not be open for general business, acting in its own behalf or in any capacity whatever, may be performed on the next succeeding business day and no liability or loss of rights on the part of any person shall result from such delay.

(4) Any bank which, by the notice provided for by subsection (3) of this section, has created the holiday for such bank may, without destroying the legal effect of the holiday for it and solely for the convenience of its customers, remain open all or part of such day in a limited fashion by treating every transaction with its customers on such day as though the transaction had taken

place immediately upon the opening of such bank on the first following business day.

(5) Whenever the word bank is used in this section it includes building and loan association, savings and loan association, credit union, savings bank, trust company, investment company, and any other type of financial institution.

Source: Laws 1905, c. 83, art. 18, § 195, p. 434; Laws 1911, c. 69, § 1, p. 306; R.S.1913, § 5512; Laws 1915, c. 98, § 1, p. 241; Laws 1921, c. 186, § 1, p. 698; C.S.1922, § 4805; C.S.1929, § 62-1706; Laws 1941, c. 187, § 1, p. 755; C.S.Supp.,1941, § 62-1706; R.S.1943, § 62-301; Laws 1945, c. 252, § 1, p. 789; Laws 1951, c. 204, § 1, p. 761; Laws 1953, c. 224, § 1, p. 790; Laws 1967, c. 395, § 1, p. 1239; Laws 1969, c. 844, § 2, p. 3180; Laws 1973, LB 34, § 2; Laws 1974, LB 729, § 1; Laws 1975, LB 218, § 2; Laws 1978, LB 855, § 2; Laws 1986, LB 825, § 1; Laws 1988, LB 909, § 2; Laws 2002, LB 1094, § 14; Laws 2003, LB 131, § 32; Laws 2020, LB848, § 9; Laws 2022, LB29, § 2; Laws 2022, LB707, § 43.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB29, section 2, with LB707, section 43, to reflect all amendments.

Note: Changes made by LB29 became effective April 19, 2022. Changes made by LB707 became operative April 19, 2022.

Cross References

Banks, days considered legal holidays, see section 8-1,129.
Thanksgiving, proclamation by Governor, see section 84-104.

CHAPTER 64
NOTARIES PUBLIC

Article.
1. General Provisions.
   (a) Appointment and Powers. 64-105, 64-113.
2. Recognition of Acknowledgments. 64-203, 64-205.
3. Electronic Notary Public Act. 64-306, 64-313.
4. Online Notary Public Act. 64-401 to 64-420.

ARTICLE 1
GENERAL PROVISIONS

(a) APPOINTMENT AND POWERS

Section
64-105. Notarial acts prohibited; when.
64-113. Removal; grounds; procedure; penalty.

(a) APPOINTMENT AND POWERS

64-105 Notarial acts prohibited; when.

(1) A notary public shall not perform any notarial act as authorized by Chapter 64, articles 1, 2, and 3 if the principal:

(a) Is not in the presence of the notary public at the time of the notarial act; and

(b) Is not personally known to the notary public or identified by the notary public through satisfactory evidence.

(2) For purposes of this section:

(a) Identified by the notary public through satisfactory evidence means identification of an individual based on:

(i) At least one document issued by a government agency that is current and that bears the photographic image of the individual's face and signature and a physical description of the individual, except that a properly stamped passport without a physical description is satisfactory evidence; or

(ii) The oath or affirmation of one credible witness unaffected by the document or transaction to be notarized who is personally known to the notary public and who personally knows the individual, or the oaths or affirmations of two credible witnesses unaffected by the document or transaction to be notarized who each personally knows the individual and shows to the notary public documentary identification as described in subdivision (a)(i) of this subsection; and

(b) Personal knowledge of identity or personally known means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

(3) This section does not apply to online notarial acts under the Online Notary Public Act.

Source: Laws 2004, LB 315, § 6; Laws 2019, LB186, § 20.

Cross References

Online Notary Public Act, see section 64-401.

64-113 Removal; grounds; procedure; penalty.

(1) Whenever charges of malfeasance in office are preferred to the Secretary of State against any notary public in this state, or whenever the Secretary of State has reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, the Secretary of State may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him or her on a day and at an hour certain, after at least ten days from the day of service of such notice. At such appearance, the notary public may show cause as to why his or her commission should not be canceled or temporarily revoked. The appointee may issue subpoenas to require the attendance and testimony of witnesses and the production of any pertinent records, papers, or documents, may administer oaths, and may accept any evidence he or she deems pertinent to a proper determination of the charge. The notary public may appear, at such time and place, and cross-examine witnesses and produce witnesses in his or her behalf. Upon the receipt of such examination, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the Secretary of State shall examine the same, and if therefrom he or she finds that the notary public is guilty of acts of malfeasance in office, he or she may remove the person charged from the office of notary public or temporarily revoke such person's commission. Within fifteen days after such removal or revocation and notice thereof, such notary public shall deposit, with the Secretary of State, the commission as notary public and notarial seal. The commission shall be canceled or temporarily revoked by the Secretary of State. A person so removed from office shall be forever disqualified from holding the office of notary public. A person whose commission is temporarily revoked shall be returned his or her commission and seal upon completion of the revocation period and passing the examination described in section 64-101.01. The fees for taking such testimony shall be paid by the state at the same rate as fees for taking depositions by notaries public. The failure of the notary public to deposit his or her commission and seal with the Secretary of State as required by this section shall subject him or her to a penalty of one thousand dollars, to be recovered in the name of the state.

(2) For purposes of this section, malfeasance in office means, while serving as a notary public, (a) failure to follow the requirements and procedures for notarial acts provided for in Chapter 64, (b) violating the confidentiality provisions of section 71-6911, or (c) being convicted of a felony or other crime involving fraud or dishonesty.

Source: Laws 1869, § 14, p. 25; G.S.1873, p. 497; R.S.1913, § 5529; C.S.1922, § 4825; C.S.1929, § 64-113; R.S.1943, § 64-113; Laws 1945, c. 145, § 10, p. 493; Laws 1967, c. 396, § 8, p. 1244; Laws 2004, LB 315, § 11; Laws 2011, LB690, § 2; Laws 2012, LB398, § 6; Laws 2019, LB186, § 21.

ARTICLE 2
RECOGNITION OF ACKNOWLEDGMENTS

64-203 Certificate; contents.

(1) The person taking an acknowledgment shall certify that:

(a) The person acknowledging appeared before him or her and acknowledged he or she executed the instrument; and

(b) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

(2) For purposes of this section, appearance before the person taking an acknowledgment includes an appearance outside the presence of a notary public if such acknowledgment was completed in accordance with the Online Notary Public Act.

Source: Laws 1969, c. 523, § 3, p. 2141; Laws 2019, LB186, § 22.

Cross References

Online Notary Public Act, see section 64-401.

64-205 Acknowledgment, defined.

(1) The words acknowledged before me means:

(a) That the person acknowledging appeared before the person taking the acknowledgment;

(b) That he or she acknowledged he or she executed the instrument;

(c) That, in the case of:

(i) A natural person, he or she executed the instrument for the purposes therein stated;

(ii) A corporation, the officer or agent acknowledged he or she held the position or title set forth in the instrument and certificate, he or she signed the instrument on behalf of the corporation by proper authority and the instrument was the act of the corporation for the purpose therein stated;

(iii) A partnership, the partner or agent acknowledged he or she signed the instrument on behalf of the partnership by proper authority and he or she executed the instrument as the act of the partnership for the purposes therein stated;

(iv) A limited liability company, the member or agent acknowledged he or she signed the instrument on behalf of the limited liability company by proper authority and he or she executed the instrument as the act of the limited liability company for the purposes therein stated;

(v) A person acknowledging as principal by an attorney in fact, he or she executed the instrument by proper authority as the act of the principal for the purposes therein stated; or

(vi) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he or she signed the instrument by proper

authority and he or she executed the instrument in the capacity and for the purposes therein stated; and

(d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

(2) For purposes of this section, appearance before the person taking an acknowledgment includes an appearance outside the presence of a notary public if such acknowledgment was completed in accordance with the Online Notary Public Act.

Source: Laws 1969, c. 523, § 5, p. 2141; Laws 1993, LB 121, § 393; Laws 2019, LB186, § 23.

Cross References

Online Notary Public Act, see section 64-401.

ARTICLE 3
ELECTRONIC NOTARY PUBLIC ACT

Section
64-306. Fee.
64-313. Electronic certificate of authority; contents; fee.

64-306 Fee.

The fee for registering or reregistering as an electronic notary shall be in addition to the fee required in section 33-102. The Secretary of State shall establish the fee by rule and regulation in an amount sufficient to cover the costs of administering the Electronic Notary Public Act, but the fee shall not exceed one hundred dollars. The Secretary of State shall remit fees received under this section to the State Treasurer for credit to the Secretary of State Cash Fund for use in administering the Electronic Notary Public Act.

Source: Laws 2016, LB465, § 6; Laws 2020, LB910, § 23.

64-313 Electronic certificate of authority; contents; fee.

(1) An electronic certificate of authority evidencing the authenticity of the notary public's electronic signature and electronic notary seal of an electronic notary public of this state shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I . . . . . (name, title, jurisdiction of commissioning official) certify that . . . . . (name of electronic notary public), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of Nebraska and authorized to act as such at the time of the document's electronic notarization. To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this . . . . . day of . . . . . , 20. . . . .

(Electronic signature (and seal) of commissioning official)

(2) The Secretary of State may charge a fee of twenty dollars for issuing an electronic certificate of authority. The Secretary of State shall remit the fees to the State Treasurer for credit to the Secretary of State Cash Fund.

Source: Laws 2016, LB465, § 13; Laws 2020, LB910, § 24.

ARTICLE 4
ONLINE NOTARY PUBLIC ACT

Section

64-401 Act, how cited.

Sections 64-401 to 64-420 shall be known as the Online Notary Public Act.

Source: Laws 2019, LB186, § 1; Laws 2021, LB94, § 1.

64-402 Terms, defined.

For purposes of the Online Notary Public Act:

(1) Communication technology means an electronic device or process that allows an online notary public and an individual who is not in the physical presence of the online notary public to communicate with each other simultaneously by sight and sound;

(2) Credential analysis means a process or service operating according to criteria approved by the Secretary of State through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources;

(3) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(4) Electronic document means information that is created, generated, sent, communicated, received, or stored by electronic means;

(5) Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document;

(6) Identity proofing means a process or service operating according to criteria approved by the Secretary of State through which a third person

affirms the identity of an individual through review of personal information from public or proprietary data sources;

(7) Online notarial act means the performance by an online notary public of a function authorized under section 64-408 that is performed by means of communication technology that meets the standards developed under section 64-407;

(8) Online notarial certificate means the portion of a notarized electronic document that is completed by an online notary public and that contains the following:

(a) The online notary public's electronic signature, online notary seal, title, and commission expiration date;

(b) Other required information concerning the date and place of the online notarial act; and

(c) The completed wording of one of the following notarial certificates: (i) Acknowledgment, (ii) jurat, (iii) verification of proof, or (iv) oath or affirmation;

(9) Online notary public means a notary public registered with the Secretary of State who has the authority to perform online notarial acts under the Online Notary Public Act;

(10) Online notary seal means information within a notarized electronic document that confirms the online notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to the data in notary seals used on paper documents;

(11) Online notary solution provider means a provider of any credential analysis, identity proofing, online notary seals, electronic signatures, or communication technology;

(12) Personal knowledge or personally known means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed;

(13) Principal means an individual:

(a) Whose electronic signature is notarized in an online notarial act; or

(b) Taking an oath or affirmation from the online notary public other than in the capacity of a witness for the online notarial act; and

(14) Remote presentation means transmission to the online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to:

(a) Identify the individual seeking the online notary public's services; and

(b) Perform credential analysis.

Source: Laws 2019, LB186, § 2.

64-403 Eligibility to register as online notary public; qualifications.

(1) To be eligible to register as an online notary public, a person shall:

(a) Hold a valid commission as a notary public in the State of Nebraska;

(b) Satisfy the education requirement of section 64-404; and

(c) Pay the fee required under section 64-405.

(2) The Secretary of State shall not accept the registration if the requirements of subsection (1) of this section are not met.

Source: Laws 2019, LB186, § 3.

64-404 Course of instruction; examination.

(1) Before registering as an online notary public, a notary public shall take a course of instruction and pass an examination approved by the Secretary of State. The course of instruction and examination shall be approved by the Secretary of State by July 31, 2020.

(2) The content of the course and the basis for the examination shall include notarial laws, procedures, technology, and the ethics of performing online notarial acts.

Source: Laws 2019, LB186, § 4.

64-405 Fee.

The fee for registering or renewing a registration as an online notary public shall be in addition to the fee required in section 33-102. The Secretary of State shall establish the fee by rule and regulation in an amount sufficient to cover the costs of administering the Online Notary Public Act, but the fee shall not exceed one hundred dollars. The Secretary of State shall remit fees received under this section to the State Treasurer for credit to the Secretary of State Cash Fund for use in administering the Online Notary Public Act.

Source: Laws 2019, LB186, § 5; Laws 2020, LB910, § 25.

64-406 Registration with Secretary of State; contents; renewal.

(1) Before performing an online notarial act, a notary public shall register with the Secretary of State in a manner prescribed by the Secretary of State.

(2) In addition to any additional information prescribed by the Secretary of State, the registration shall include:

(a) The technology the notary public intends to use to perform an online notarial act. Such technology shall be provided by an online notary solution provider approved by the Secretary of State;

(b) A certification by the notary that he or she will comply with the standards developed under section 64-407; and

(c) An email address for the notary.

(3) The term of registration as an online notary public shall coincide with the term of the commission of the notary public.

(4) An application to renew registration as an online notary public shall specify any change in the technology the online notary public intends to use to perform online notarial acts. Such technology shall be provided by an online notary solution provider approved by the Secretary of State.

(5) A person registered as an online notary public may renew his or her online notary public registration at the same time he or she renews his or her notary public commission.

Source: Laws 2019, LB186, § 6.

64-407 Rules and regulations.

(1) The Secretary of State shall adopt and promulgate rules and regulations:

(a) Creating standards for online notarial acts in accordance with the Online Notary Public Act, including standards for credential analysis, identity proofing, and communication technology used for online notarial acts; and

(b) To ensure the integrity, security, and authenticity of online notarial acts in accordance with the Online Notary Public Act. Such rules and regulations shall include procedures for the approval of online notary solution providers by the Secretary of State.

(2) The Secretary of State may adopt and promulgate rules and regulations to facilitate the utilization of online notarial acts.

Source: Laws 2019, LB186, § 7.

64-408 Types of online notarial acts.

The following types of online notarial acts may be performed by an online notary public:

(1) Acknowledgments;

(2) Jurats;

(3) Verifications or proofs; and

(4) Oaths or affirmations.

Source: Laws 2019, LB186, § 8.

64-409 Electronic record; contents; online notary public; duties; retention period.

(1) An online notary public shall keep a secure electronic record of electronic documents notarized by the online notary public. For each online notarial act, the electronic record shall contain:

(a) The date and time of the online notarial act;

(b) The type of online notarial act;

(c) The type, title, or description of the electronic document or proceeding;

(d) The printed name and address of each principal involved in the transaction or proceeding;

(e) Evidence of identity of each principal involved in the transaction or proceeding in the form of:

(i) A statement that the principal is personally known to the online notary public;

(ii) A notation of the type of identification document provided to the online notary public;

(iii) A record of the identity verification made under section 64-411; or

(iv) The following:

(A) The printed name and address of each credible witness swearing to or affirming the principal's identity; and

(B) For each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;

(f) A recording of any video and audio conference of the performance of the online notarial act, which shall not contain images of the documents that were notarized; and

(g) The fee, if any, charged for the online notarial act.

(2) The online notary public shall take reasonable steps to:

(a) Ensure the integrity, security, and authenticity of online notarial acts;

(b) Maintain a backup for the secure electronic record required by this section; and

(c) Protect the secure electronic record and backup record from unauthorized use.

(3) The electronic record and backup record required by this section shall be maintained for at least ten years after the date of the transaction or proceeding. The online notary public shall not surrender or destroy the record except as required by a court order or as allowed under rules and regulations adopted and promulgated by the Secretary of State.

Source: Laws 2019, LB186, § 9.

64-410 Electronic signature and online notary seal; use; registered device; report of theft or vandalism.

(1) An online notary public's electronic signature in combination with the online notary seal shall be used only for the purpose of performing online notarial acts.

(2) An online notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.

(3) An online notary public shall keep secure and under his or her exclusive control: The online notary public's electronic signature, online notary seal, and the electronic record and backup record required under section 64-409. The online notary public shall not allow another person to use the online notary public's electronic signature, online notary seal, or electronic record or backup record.

(4) An online notary public shall immediately notify an appropriate law enforcement agency and the Secretary of State of the theft or vandalism of the online notary public's electronic signature, online notary seal, or the electronic record or backup record required under section 64-409. An online notary public shall immediately notify the Secretary of State of the loss or use by another person of the online notary public's electronic signature, online notary seal, or the electronic record or backup record required under section 64-409.

Source: Laws 2019, LB186, § 10.

64-411 Physical location of principal; verification of identity; manner; security of communication technology; online notarial certificate; notation required.

(1) An online notary public may perform an online notarial act authorized under section 64-408 that meets the requirements of the Online Notary Public Act and the rules and regulations adopted and promulgated thereunder regardless of whether the principal is physically located in this state at the time of the online notarial act.

(2) In performing an online notarial act, an online notary public shall verify the identity of an individual creating an electronic signature. Identity shall be verified by:

(a) The online notary public's personal knowledge of the individual creating the electronic signature;

(b) All of the following:

(i) Remote presentation by the individual creating the electronic signature of a government-issued identification credential that is current and that bears the photographic image of the individual's face and signature and a physical description of the individual, except that a properly stamped passport without a physical description is satisfactory evidence;

(ii) Credential analysis of such credential; and

(iii) Identity proofing of the individual creating the electronic signature; or

(c) Oath or affirmation of a credible witness who is in the physical presence of either the online notary public or the individual and who has personal knowledge of the individual if:

(i) The credible witness is personally known to the online notary public; or

(ii) The online notary public has verified the identity of the credible witness under subdivision (2)(b) of this section.

(3) The online notary public shall take reasonable steps to ensure that the communication technology used in an online notarial act is secure from unauthorized interception.

(4) An online notary public shall attach the online notary public's electronic signature and online notary seal to the online notarial certificate of an electronic document in a manner that is capable of independent verification and that renders evident any subsequent change or modification to the electronic document.

(5) The online notarial certificate for an online notarial act must include a notation that the notarial act is an online notarial act.

Source: Laws 2019, LB186, § 11.

64-412 Fee.

In addition to any fee authorized under section 33-133, an online notary public or his or her employer may charge a fee in an amount not to exceed twenty-five dollars for each online notarial act.

Source: Laws 2019, LB186, § 12.

64-413 Expiration of registration; resignation, cancellation, or revocation; death of online notary public; required actions.

(1) Except as provided in subsection (2) of this section, when the registration of an online notary public expires or is resigned, canceled, or revoked or when an online notary public dies, he or she or his or her duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software, file, password, or program that enables the electronic affixation of the online notary public's official electronic signature and online notary seal. The online notary public or his or her duly authorized representative shall certify compliance with this subsection to the Secretary of State.

(2) A former online notary public whose previous registration was not revoked, canceled, or denied by the Secretary of State need not comply with subsection (1) of this section if he or she is reregistered as an online notary public using the same electronic signature within three months after the former registration expired.

Source: Laws 2019, LB186, § 13.

64-414 Prohibited acts; penalty.

A person who, without authorization, knowingly obtains, conceals, damages, or destroys the coding, disk, certificate, card, software, file, password, program, or hardware enabling an online notary public to affix an official electronic signature or online notary seal shall be guilty of a Class I misdemeanor.

Source: Laws 2019, LB186, § 14.

64-415 Electronic certificate of authority; form; fee.

(1) Electronic evidence of the authenticity of the electronic signature and online notary seal of an online notary public of this state, if required, shall be attached to, or logically associated with, a document with an online notary public's electronic signature transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary of State in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States Government.

(2) An electronic certificate of authority evidencing the authenticity of the electronic signature and online notary seal of an online notary public of this state shall contain substantially the following words:

Certificate of Authority for an Online Notarial Act

I . . . . . (name, title, jurisdiction of commissioning official) certify that . . . . . (name of online notary public), the person named as an online notary public in the attached or associated document, was indeed registered as an online notary public for the State of Nebraska and authorized to act as such at the time of the document's electronic notarization. To verify this Certificate of Authority for an Online Notarial Act, I have included herewith my electronic signature this . . . . . day of . . . ., 20. . . .

(Electronic signature (and seal) of commissioning official)

(3) The Secretary of State may charge a fee of twenty dollars for issuing an electronic certificate of authority. The Secretary of State shall remit the fees to the State Treasurer for credit to the Secretary of State Cash Fund for use in administering the Online Notary Public Act.

Source: Laws 2019, LB186, § 15; Laws 2020, LB910, § 26.

64-416 Violation of act; removal of registration.

A person violating the Online Notary Public Act is subject to having his or her registration removed under the removal procedures provided in section 64-113.

Source: Laws 2019, LB186, § 16.

64-417 Effect of act on notary public that does not perform online notarial acts.

Nothing in the Online Notary Public Act requires a notary public to register as an online notary public if he or she does not perform online notarial acts.

Source: Laws 2019, LB186, § 17.

64-418 Provisions governing online notary public; online notarial act; not available for certain requirements.

(1) Sections 64-101 to 64-119 and 64-211 to 64-215 and the Uniform Recognition of Acknowledgments Act govern an online notary public unless the provisions of such sections and act are in conflict with the Online Notary Public Act, in which case the Online Notary Public Act controls.

(2) An online notarial act performed under the Online Notary Public Act satisfies any requirement of law of this state that a principal appear before, appear personally before, or be in the physical presence of a notary public at the time of the online notarial act except for requirements under:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts; or

(b) The Uniform Commercial Code other than article 2 and article 2A.

(3) The Electronic Notary Public Act does not apply to online notarial acts or online public notaries acting under the Online Notary Public Act.

Source: Laws 2019, LB186, § 18.

Cross References

Electronic Notary Public Act, see section 64-301.
Uniform Recognition of Acknowledgments Act, see section 64-209.

64-419 Online notarial act; validity.

No otherwise valid online notarial act performed on or after April 2, 2020, and before July 1, 2020, pursuant to the Governor's Executive Order No. 20-13, dated April 1, 2020, shall be invalidated because such act was performed prior to the operative date of Laws 2019, LB186.

Source: Laws 2021, LB94, § 2.

64-420 Deed, mortgage, trust deed, other instrument in writing; online notarial act; validity.

No deed, mortgage, trust deed, or other instrument in writing for the conveyance or encumbrance of real estate, or any interest therein, shall be invalidated because it involved the performance of an online notarial act on or after April 2, 2020, and before July 1, 2020, pursuant to the Governor's Executive Order No. 20-13, dated April 1, 2020. Such deed, mortgage, trust deed, or other instrument in writing is declared to be legal and valid in all courts of law and equity in this state and elsewhere.

Source: Laws 2021, LB94, § 3.

CHAPTER 66
OILS, FUELS, AND ENERGY

Article.
2. Nebraska Clean-burning Motor Fuel Development Act. 66-203, 66-204.
3. Carbon Dioxide Emissions. 66-301 to 66-304.
4. Motor Vehicle Fuel Tax. 66-482 to 66-4,143.
6. Diesel, Alternative, and Compressed Fuel Taxes.
(d) Compressed Fuel Tax. 66-6,101.
7. Motor Fuel Tax Enforcement and Collection. 66-712 to 66-739.
10. Energy Conservation.
(a) Utility Loans. 66-1004, 66-1009.
11. Geothermal Resources. 66-1105.
13. Ethanol. 66-1330 to 66-1352.
14. International Fuel Tax Agreement Act. 66-1401 to 66-1428.
15. Petroleum Release Remedial Action. 66-1504 to 66-1529.02.
20. Natural Gas Fuel Board. 66-2001.
22. Renewable Fuel Infrastructure Program. 66-2201 to 66-2207.
23. Hydrogen Hubs. 66-2301.

ARTICLE 2
NEBRASKA CLEAN-BURNING MOTOR FUEL DEVELOPMENT ACT

Section
66-203. Rebate for qualified clean-burning motor vehicle fuel property.
66-204. Clean-burning Motor Fuel Development Fund; created; use; investment.

66-203 Rebate for qualified clean-burning motor vehicle fuel property.

(1) The Department of Environment and Energy shall offer a rebate for qualified clean-burning motor vehicle fuel property.

(2)(a) The rebate for qualified clean-burning motor vehicle fuel property as defined in subdivisions (4)(a) and (b) of section 66-202 is the lesser of fifty percent of the cost of the qualified clean-burning motor vehicle fuel property or four thousand five hundred dollars for each motor vehicle.

(b) A qualified clean-burning motor vehicle fuel property is not eligible for a rebate under this section if the person or entity applying for the rebate has claimed another rebate or grant for the same motor vehicle under any other state rebate or grant program.

(3) The rebate for qualified clean-burning motor vehicle fuel property as defined in subdivision (4)(c) of section 66-202 is the lesser of fifty percent of the cost of the qualified clean-burning motor vehicle fuel property or two thousand five hundred dollars for each qualified clean-burning motor vehicle fuel property.

(4) No qualified clean-burning motor vehicle fuel property shall qualify for more than one rebate under this section.

Source: Laws 2015, LB581, § 3; Laws 2016, LB902, § 2; Laws 2019, LB302, § 69.

66-204 Clean-burning Motor Fuel Development Fund; created; use; investment.

(1) The Clean-burning Motor Fuel Development Fund is created. The fund shall consist of grants, private contributions, and all other sources.

(2) The fund shall be used by the Department of Environment and Energy to provide rebates under the Nebraska Clean-burning Motor Fuel Development Act up to the amount transferred under subsection (3) of this section. No more than thirty-five percent of the money in the fund annually shall be used as rebates for flex-fuel dispensers. The department may use the fund for necessary costs in the administration of the act up to an amount not exceeding ten percent of the fund annually.

(3) Within five days after August 30, 2015, the State Treasurer shall transfer five hundred thousand dollars from the General Fund to the Clean-burning Motor Fuel Development Fund to carry out the Nebraska Clean-burning Motor Fuel Development Act.

(4) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The State Treasurer shall transfer two hundred thousand dollars from the Clean-burning Motor Fuel Development Fund to the General Fund on or before June 30, 2018, on such dates and in such amounts as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2015, LB581, § 4; Laws 2016, LB902, § 3; Laws 2016, LB957, § 4; Laws 2017, LB331, § 31; Laws 2019, LB302, § 70.

Cross References

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

ARTICLE 3

CARBON DIOXIDE EMISSIONS

Section
66-301. Terms, defined.
66-302. Department of Environment and Energy; state plan for regulating carbon dioxide emissions; duties.
66-303. Department of Environment and Energy; duties; report; contents; legislative vote.
66-304. State plan; submit to Legislature.

66-301 Terms, defined.

For purposes of sections 66-301 to 66-304:

(1) Covered electric generating unit means a fossil fuel-fired electric generating unit existing within the state prior to August 30, 2015, that is subject to regulation under the federal emission guidelines;

(2) Federal emission guidelines means any final rules, regulations, guidelines, or other requirements that the United States Environmental Protection Agency may adopt for regulating carbon dioxide emissions from covered electric generating units under section 111(d) of the federal Clean Air Act, 42 U.S.C. 7411(d);

(3) State means the State of Nebraska; and

(4) State plan means any plan to establish and enforce carbon dioxide emission control measures that the Department of Environment and Energy may adopt to implement the obligations of the state under the federal emission guidelines.

Source: Laws 2015, LB469, § 1; Laws 2019, LB302, § 71.

66-302 Department of Environment and Energy; state plan for regulating carbon dioxide emissions; duties.

The Department of Environment and Energy shall not submit a state plan for regulating carbon dioxide emissions from covered electric generating units to the United States Environmental Protection Agency until the department has prepared a report as required in section 66-303. Nothing in this section shall prevent the department from complying with federally prescribed deadlines.

Source: Laws 2015, LB469, § 2; Laws 2019, LB302, § 72.

66-303 Department of Environment and Energy; duties; report; contents; legislative vote.

(1) The Department of Environment and Energy shall also prepare a report that assesses the effects of the state plan for regulating carbon dioxide emissions from covered electric generating units on:

(a) The electric power sector, including:

(i) The type and amount of electric generating capacity within the state that is likely to retire or switch to another fuel;

(ii) The stranded investment in electric generating capacity and other infrastructure;

(iii) The amount of investment necessary to offset retirements of electric generating capacity and maintain generation reserve margins;

(iv) Potential risks to electric reliability, including resource adequacy risks and transmission constraints; and

(v) The amount by which retail electricity prices within the state are forecast to increase or decrease; and

(b) Employment within the state, including direct and indirect employment effects within affected sectors of the state's economy.

(2) The department shall complete the report required under this section at least thirty days prior to submitting the state plan prepared pursuant to section 66-302 and shall electronically submit to the Legislature a copy of such report.

(3) If the Legislature is in session when it receives the report, the Legislature may vote on a nonbinding legislative resolution endorsing or disapproving the state plan based on the findings of the report.

Source: Laws 2015, LB469, § 3; Laws 2019, LB302, § 73.

66-304 State plan; submit to Legislature.

Upon submitting a state plan to the United States Environmental Protection Agency, the Department of Environment and Energy shall electronically submit to the Legislature a copy of the state plan.

Source: Laws 2015, LB469, § 4; Laws 2019, LB302, § 74.

ARTICLE 4
MOTOR VEHICLE FUEL TAX

Section
66-482. Terms, defined.
66-489.02. Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.
66-4,143. Materiel administrator; submit report; contents.

66-482 Terms, defined.

For purposes of sections 66-482 to 66-4,149:

(1) Motor vehicle shall have the same definition as in section 60-339;

(2) Motor vehicle fuel shall include all products and fuel commonly or commercially known as gasoline, including casing head or natural gasoline, and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of operating or propelling motor vehicles, motorboats, or aircraft or as an ingredient in the manufacture of such fuel. Agricultural ethyl alcohol produced for use as a motor vehicle fuel shall be considered a motor vehicle fuel. Motor vehicle fuel shall not include the products commonly known as methanol, kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, smudge oil, leaded automotive racing fuel with an American Society of Testing Materials research method octane number in excess of one hundred five, and any petroleum product with an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit, an American Society of Testing Materials research method octane number less than seventy, and an end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum;

(3) Agricultural ethyl alcohol shall mean ethyl alcohol produced from cereal grains or agricultural commodities grown within the continental United States and which is a finished product that is a nominally anhydrous ethyl alcohol meeting American Society for Testing and Materials D4806 standards. For the purpose of sections 66-482 to 66-4,149, the purity of the ethyl alcohol shall be determined excluding denaturant and the volume of alcohol blended with gasoline for motor vehicle fuel shall include the volume of any denaturant required pursuant to law;

(4) Alcohol blend shall mean a blend of agricultural ethyl alcohol in gasoline or other motor vehicle fuel, such blend to contain not less than five percent by volume of alcohol;

(5) Supplier shall mean any person who owns motor fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state;

(6) Distributor shall mean any person who acquires ownership of motor fuels directly from a producer or supplier at or from a barge, barge line, pipeline terminal, or ethanol or biodiesel facility in this state;

(7) Wholesaler shall mean any person, other than a producer, supplier, distributor, or importer, who acquires motor fuels for resale;

(8) Retailer shall mean any person who acquires motor fuels from a producer, supplier, distributor, wholesaler, or importer for resale to consumers of such fuel;

(9) Importer shall mean any person who owns motor fuels at the time such fuels enter the State of Nebraska by any means other than barge, barge line, or pipeline. Importer shall not include a person who imports motor fuels in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected;

(10) Exporter shall mean any person who acquires ownership of motor fuels from any licensed producer, supplier, distributor, wholesaler, or importer exclusively for use or resale in another state;

(11) Gross gallons shall mean measured gallons without adjustment or correction for temperature or barometric pressure;

(12) Diesel fuel shall mean all combustible liquids and biodiesel which are suitable for the generation of power for diesel-powered vehicles, except that diesel fuel shall not include kerosene;

(13) Compressed fuel shall mean any fuel defined as compressed fuel in section 66-6,100;

(14) Person shall mean any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine or imprisonment is prescribed or imposed in sections 66-482 to 66-4,149, the word person as applied to a partnership, a limited liability company, or an association shall mean the partners or members thereof;

(15) Department shall mean the Department of Revenue;

(16) Semiannual period shall mean either the period which begins on January 1 and ends on June 30 of each year or the period which begins on July 1 and ends on December 31 of each year;

(17) Producer shall mean any person who manufactures agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel facility in this state;

(18) Highway shall mean every way or place generally open to the use of the public for the purpose of vehicular travel, even though such way or place may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

(19) Kerosene shall mean kerosene meeting the specifications as found in the American Society for Testing and Materials publication D3699 entitled Standard Specifications for Kerosene;

(20) Biodiesel shall mean mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats which conform to American Society for Testing and Materials D6751 specifications for use in diesel engines. Biodiesel refers to the pure fuel before blending with diesel fuel;

(21) Motor fuels shall mean motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel;

(22) Ethanol facility shall mean a plant which produces agricultural ethyl alcohol; and

(23) Biodiesel facility shall mean a plant which produces biodiesel.

Source: Laws 1925, c. 172, § 1, p. 448; Laws 1929, c. 150, § 1, p. 525; C.S.1929, § 66-401; Laws 1935, c. 3, § 15, p. 63; Laws 1935, Spec. Sess., c. 13, § 1, p. 86; Laws 1939, c. 86, § 1, p. 366; C.S.Supp.,1941, § 66-401; R.S.1943, § 66-401; Laws 1955, c. 246, § 1, p. 777; Laws 1963, c. 377, § 1, p. 1214; Laws 1963, c. 375, § 2, p. 1206; Laws 1981, LB 360, § 1; Laws 1987, LB 523, § 5; Laws 1988, LB 1039, § 1; R.S.1943, (1990), § 66-401; Laws 1991, LB 627, § 9; Laws 1993, LB 121, § 395; Laws 1994, LB 1160, § 55; Laws 1995, LB 182, § 28; Laws 1996, LB 1121, § 1; Laws 1998, LB 1161, § 14; Laws 2004, LB 479, § 1; Laws 2004, LB 983, § 5; Laws 2005, LB 274, § 267; Laws 2008, LB846, § 2; Laws 2014, LB851, § 6; Laws 2019, LB512, § 3.

Cross References

For additional definitions, see section 66-712.

66-489.02 Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.

(1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-488, the producer, supplier, distributor, wholesaler, or importer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline for the gallons of the motor fuels as shown by the return, except that there shall be no tax on the motor fuels reported if they are otherwise exempted by sections 66-482 to 66-4,149.

(2) The department shall calculate the average wholesale price of gasoline on April 1, 2009, and on each April 1 and October 1 thereafter. The average wholesale price on April 1 shall apply to returns for the tax periods beginning on and after July 1, and the average wholesale price on October 1 shall apply to returns for the tax periods beginning on and after January 1. The average wholesale price shall be determined using data available from the Department of Environment and Energy and shall be an average wholesale price per gallon of gasoline sold in the state over the previous six-month period, excluding any state or federal excise tax or environmental fees. The change in the average wholesale price between two six-month periods shall be adjusted so that the increase or decrease in the tax provided for in this section or section 66-6,109.02 does not exceed one cent per gallon.

(3) All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated as follows:

(a) Sixty-six percent to the Highway Cash Fund for the Department of Transportation;

(b) Seventeen percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and

(c) Seventeen percent to the Highway Allocation Fund for allocation to the various municipalities for street purposes.

Source: Laws 2008, LB846, § 11; Laws 2012, LB727, § 18; Laws 2017, LB339, § 237; Laws 2019, LB302, § 75.

66-4,143 Materiel administrator; submit report; contents.

(1) The materiel administrator of the Department of Administrative Services shall on or before the tenth day of the fifth calendar month following the end of a semiannual period submit to the Department of Revenue a report providing the total cost and number of gallons of motor fuels purchased by the State of Nebraska during the preceding month. In providing such information, the materiel administrator shall total only those purchases which were fifty or more gallons and shall separately identify the amount of any state or federal tax which was included in the price paid.

(2) The Department of Revenue shall provide any assistance the materiel administrator may need in performing his or her duties under this section.

Source: Laws 1980, LB 722, § 10; Laws 1981, LB 172, § 4; R.S.1943, (1990), § 66-475; Laws 1991, LB 627, § 57; Laws 1994, LB 1160, § 76; Laws 1995, LB 182, § 35; Laws 1998, LB 1161, § 17; Laws 2004, LB 983, § 26; Laws 2019, LB512, § 4.

ARTICLE 6

DIESEL, ALTERNATIVE, AND COMPRESSED FUEL TAXES

(d) COMPRESSED FUEL TAX

Section
66-6,101. Department, defined.

(d) COMPRESSED FUEL TAX

66-6,101 Department, defined.

Department means the Department of Revenue.

Source: Laws 1995, LB 182, § 5; Laws 2019, LB512, § 5.

ARTICLE 7

MOTOR FUEL TAX ENFORCEMENT AND COLLECTION

Section
66-712. Terms, defined.
66-718. Report, return, or other statement; department; powers; electronic filing.
66-738. Repealed. Laws 2019, LB512, § 34.
66-739. Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment.

66-712 Terms, defined.

For purposes of the Compressed Fuel Tax Act and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736:

(1) Department means the Department of Revenue;

(2) Motor fuel means any fuel defined as motor vehicle fuel in section 66-482, any fuel defined as diesel fuel in section 66-482, and any fuel defined as compressed fuel in section 66-6,100;

(3) Motor fuel laws means the Compressed Fuel Tax Act and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736; and

(4) Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine, imprisonment, or both are prescribed or imposed in sections 66-712 to 66-736, the word person as applied to a partnership, a limited liability company, or an association means the partners or members thereof.

Source: Laws 1991, LB 627, § 107; Laws 1993, LB 121, § 398; Laws 1994, LB 1160, § 95; Laws 1995, LB 182, § 52; Laws 1996, LB 1218, § 19; Laws 2004, LB 983, § 45; Laws 2011, LB289, § 35; Laws 2012, LB727, § 22; Laws 2018, LB177, § 3; Laws 2019, LB512, § 6.

Cross References

Compressed Fuel Tax Act, see section 66-697.

66-718 Report, return, or other statement; department; powers; electronic filing.

(1) The department may require such other information as it deems necessary on any report, return, or other statement under the motor fuel laws.

(2) The Tax Commissioner may require any of the reports, returns, or other filings due from any motor fuels licensees to be filed electronically.

(3) The department shall prescribe the formats or procedures for electronic filing. To the extent not inconsistent with requirements of the motor fuel laws, the department shall adopt formats and procedures that are consistent with other states requiring electronic reporting of motor fuel information.

(4) Any person who does not file electronically when required or who fails to use the prescribed formats and procedures shall be considered to have not filed the return, report, or other filing.

(5) For purposes of the electronic funds transfer requirements contained in section 77-1784, motor vehicle fuel tax, diesel fuel tax, compressed fuel tax, and all other fuel-related tax programs administered by the department shall be considered as comprising one tax program.

Source: Laws 1991, LB 627, § 112; Laws 1997, LB 720, § 19; Laws 1998, LB 1161, § 24; Laws 2000, LB 1067, § 26; Laws 2004, LB 983, § 48; Laws 2019, LB512, § 7.

66-738 Repealed. Laws 2019, LB512, § 34.

66-739 Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment.

There is hereby created the Motor Fuel Tax Enforcement and Collection Cash Fund. Such fund shall consist of appropriations to the fund and money transferred to it pursuant to section 39-2215. The fund shall be used exclusively for the costs of the Department of Revenue in carrying out its duties under the Compressed Fuel Tax Act, the Petroleum Release Remedial Action Act, the State Aeronautics Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736 and other related costs for the Department of Agriculture and the Nebraska State Patrol, except that transfers may be made from the fund to

the General Fund at the direction of the Legislature. Any money in the Motor Fuel Tax Enforcement and Collection Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 627, § 142; Laws 1994, LB 1066, § 53; Laws 1994, LB 1160, § 110; Laws 2009, First Spec. Sess., LB3, § 40; Laws 2019, LB512, § 8.

Cross References

Compressed Fuel Tax Act, see section 66-697.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
Petroleum Release Remedial Action Act, see section 66-1501.
State Aeronautics Act, see section 3-154.

ARTICLE 10

ENERGY CONSERVATION

(a) UTILITY LOANS

Section
66-1004. Energy conservation measure, defined.
66-1009. Loan; repayment plan; default; use; lien; limitation; Director of Environment and Energy; duties.

(a) UTILITY LOANS

66-1004 Energy conservation measure, defined.

Energy conservation measure shall mean installing or using any:

(1) Caulking or weatherstripping of doors or windows;

(2) Furnace efficiency modifications involving electric service;

(3) Clock thermostats;

(4) Water heater insulation or modification;

(5) Ceiling, attic, wall, or floor insulation;

(6) Storm windows or doors, multiglazed windows or doors, or heat absorbing or reflective glazed window and door material;

(7) Devices which control demand of appliances and aid load management;

(8) Devices to utilize solar energy, biomass, or wind power for any energy conservation purpose, including heating of water and space heating or cooling, which have been identified by the Department of Environment and Energy as an energy conservation measure for the purposes of sections 66-1001 to 66-1011;

(9) High-efficiency lighting and motors;

(10) Devices which are designed to increase energy efficiency, the utilization of renewable resources, or both; and

(11) Such other conservation measures as the department shall identify.

Source: Laws 1980, LB 954, § 17; Laws 1982, LB 799, § 2; Laws 1994, LB 941, § 1; Laws 2019, LB302, § 76.

66-1009 Loan; repayment plan; default; use; lien; limitation; Director of Environment and Energy; duties.

(1) A customer borrowing from a utility under a plan adopted pursuant to sections 66-1001 to 66-1011 shall be allowed to contract with the utility for a repayment plan and shall be offered a repayment period of not less than three years and not more than twenty years.

(2) Upon default on a loan by a customer, after expending reasonable efforts to collect, a utility may treat the entire unpaid contract amount as due, but services to a residential, agricultural, or commercial customer may not be terminated as a result of such default. Default occurs when any amount due a utility under a plan adopted pursuant to sections 66-1001 to 66-1011, 70-625, 70-704, 81-161, 81-1606 to 81-1626, and 84-162 to 84-167 is not paid within sixty days of the due date.

(3) Any customer obtaining a loan pursuant to section 66-1007 shall only use the funds to accomplish the purposes agreed upon at the time of the loan. If the borrower of any funds obtained pursuant to sections 66-1001 to 66-1011 uses such funds in a manner or for a purpose not authorized by this section, the total amount of the loan shall immediately become due and payable.

(4) Any amount due a utility on a loan pursuant to sections 66-1001 to 66-1011 which is not paid in full within sixty days of the due date shall become a lien as provided in this section on the real property concerned as to the full unpaid balance. No lien under this section shall be valid unless (a) the loan was signed by the party or parties shown on the indexes of the register of deeds to be the owners of record of such real property on the date of the loan and (b) the lien is filed not more than four months after the date of default, in the same office and in the same manner as mortgages in the county in which the real property is located. Such lien shall take effect and be in force from and after the time of delivering the same to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers in good faith without notice, and such lien shall be adjudged void as to all such creditors and subsequent purchasers without notice whose deeds, mortgages, or other instruments shall be first recorded, except that such lien shall be valid between the parties. A publicly owned utility shall not maintain possession of any property which it may acquire pursuant to a lien authorized by this section for a period of time longer than is reasonably necessary to dispose of such property.

(5) Any loan made under a plan adopted pursuant to sections 66-1001 to 66-1011 shall not exceed fifteen thousand dollars, subject to any existing limitations under federal law. Any loan to be made by a utility which exceeds ten thousand dollars shall only be made in participation with a bank pursuant to a contract. The utility and the participating bank shall determine the terms and conditions of the contract.

(6) The Director of Environment and Energy may adopt and promulgate rules and regulations to carry out sections 66-1001 to 66-1011.

Source: Laws 1980, LB 954, § 22; Laws 1982, LB 799, § 4; Laws 1983, LB 626, § 77; Laws 1993, LB 479, § 1; Laws 1994, LB 941, § 3; Laws 2019, LB302, § 77.

ARTICLE 11

GEOTHERMAL RESOURCES

Section

66-1105 Geothermal resource development; conditions; permit; Department of Natural Resources; adopt rules and regulations.

Any person who desires to withdraw ground water within the State of Nebraska for geothermal resource development shall, prior to commencing construction of any wells, obtain from the Director of Natural Resources a permit to authorize the withdrawal, transfer, and further use or reinjection of such ground water. The Department of Natural Resources shall adopt and promulgate rules and regulations governing the issuance of such permits, consistent with sections 66-1101 to 66-1106 and with Chapter 46, article 6. Such rules and regulations shall provide for consultation with the Department of Environment and Energy pursuant to the issuance of such permits and shall be compatible with rules and regulations adopted and promulgated by the Department of Environment and Energy under the Environmental Protection Act. Any geothermal fluids produced incident to the development and production of geothermal resources shall be reinjected into the same geologic formation from which they were extracted in substantially the same volume and substantially the same or higher quality as when extracted unless the permit issued in accordance with this section authorizes further uses or processing other than those incident to reinjection.

Source: Laws 1982, LB 708, § 5; Laws 1993, LB 3, § 37; Laws 2000, LB 900, § 245; Laws 2019, LB302, § 78.

Cross References

Environmental Protection Act, see section 81-1532.

ARTICLE 13
ETHANOL

Section
66-1330. Act, how cited.
66-1334. Agricultural Alcohol Fuel Tax Fund; created; use; investment.
66-1335. Nebraska Ethanol Board; established; terms; vacancy; meetings; expenses.
66-1344. Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties.
66-1351. Treated seed; use prohibited; when.
66-1352. Toxic chemicals; University of Nebraska conduct assessment.

66-1330 Act, how cited.

Sections 66-1330 to 66-1351 shall be known and may be cited as the Ethanol Development Act.

Source: Laws 1986, LB 1230, § 1; Laws 1987, LB 279, § 1; Laws 1989, LB 587, § 1; Laws 1992, LB 754, § 1; R.S.Supp.,1992, § 66-1301; Laws 1993, LB 364, § 1; Laws 1995, LB 377, § 1; Laws 2001, LB 536, § 1; Laws 2004, LB 479, § 2; Laws 2021, LB507, § 7.

66-1334 Agricultural Alcohol Fuel Tax Fund; created; use; investment.

(1) The Agricultural Alcohol Fuel Tax Fund is hereby created. The fund shall be administered by the board. The fund shall contain (a) transfers made pursuant to section 66-726, (b) all sums of money received from fees resulting from any conference or event held by the board, (c) gifts, grants, and contribu-

tions made by public or private entities, and (d) transfers as authorized by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The fund shall be used for the following purposes:

(a) Establishment, with cooperation of private industry, of procedures and processes necessary to the manufacture and marketing of fuel containing agricultural ethyl alcohol;

(b) Establishment of procedures for entering blended fuel into the marketplace by private enterprise;

(c) Analysis of the marketing process and testing of marketing procedures to assure acceptance in the private marketplace of blended fuel and byproducts resulting from the manufacturing process;

(d) Cooperation with private industry to establish privately owned agricultural ethyl alcohol manufacturing plants in Nebraska to supply demand for blended fuel;

(e) Sponsoring research and development of industrial and commercial uses for agricultural ethyl alcohol and for byproducts resulting from the manufacturing process;

(f) Promotion of state and national air quality improvement programs and influencing federal legislation that requires or encourages the use of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives;

(g) Promotion of the use of renewable agricultural ethyl alcohol as a partial replacement for imported oil and for the energy and economic security of the nation;

(h) Participation in development and passage of national legislation dealing with research, development, and promotion of United States production of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives, access to potential markets, tax incentives, imports of foreign-produced fuel, and related concerns that may develop in the future; and

(i) As the board may otherwise direct to fulfill the goals set forth under the Ethanol Development Act, including monitoring contracts for ethanol program commitments and solicitation of federal funds.

Source: Laws 1993, LB 364, § 5; Laws 1994, LB 1066, § 54; Laws 2004, LB 983, § 58; Laws 2009, LB316, § 16; Laws 2019, LB298, § 16.

Cross References

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

66-1335 Nebraska Ethanol Board; established; terms; vacancy; meetings; expenses.

(1) The Nebraska Ethanol Board is hereby established. The board shall consist of seven members to be appointed by the Governor with the approval of a majority of the Legislature. The Governor shall make the initial appointments within thirty days after September 1, 1993. Four members shall be actually engaged in farming in this state, one in general farming and one each in the production of corn, wheat, and sorghum. One member shall be actively engaged in business in this state. One member shall represent labor interests in

this state. One member shall represent Nebraska petroleum marketers in this state.

(2) Members shall be appointed for terms of four years, except that of the initial appointees the terms of the member representing labor interests and the member engaged in general farming shall expire on August 31, 1994, the terms of the member engaged in sorghum production and the member engaged in wheat production shall expire on August 31, 1995, the term of the member representing petroleum marketers shall expire on August 31, 1996, and the terms of the member engaged in business and the member engaged in corn production shall expire on August 31, 1997. A member shall serve until a successor is appointed and qualified. Not more than four members shall be members of the same political party.

(3) A vacancy on the board shall exist in the event of death, disability, resignation, or removal for cause of a member. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made by the Governor with the approval of a majority of the Legislature, and any person so appointed shall have the same qualifications as the person whom he or she succeeds.

(4) The board shall meet at least once annually.

(5) The members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177. The members shall receive twenty-five dollars for each day while engaged in the performance of board duties.

Source: Laws 1993, LB 364, § 6; Laws 2020, LB381, § 53.

66-1344 Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties.

(1) Beginning June 1, 2000, during such period as funds remain in the Ethanol Production Incentive Cash Fund, any ethanol facility shall receive a credit of seven and one-half cents per gallon of ethanol, before denaturing, for new production for a period not to exceed thirty-six consecutive months. For purposes of this subsection, new production means production which results from the expansion of an existing facility's capacity by at least two million gallons first placed into service after June 1, 1999, as certified by the facility's design engineer to the Department of Revenue. For expansion of an existing facility's capacity, new production means production in excess of the average of the highest three months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits shall be allowed under this subsection for expansion of an existing facility's capacity until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than June 1, 2000. New production shall be approved by the Department of Revenue based on such ethanol production records as may be necessary to reasonably determine new production. This credit must be earned on or before December 31, 2003.

(2)(a) Beginning January 1, 2002, any new ethanol facility which is in production at the minimum rate of one hundred thousand gallons annually for the production of ethanol, before denaturing, and which has provided to the Department of Revenue written evidence substantiating that the ethanol facility

has received the requisite authority from the Department of Environment and Energy and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, on or before June 30, 2004, shall receive a credit of eighteen cents per gallon of ethanol produced for ninety-six consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2012, if the facility is defined by subdivision (b)(i) of this subsection, and for forty-eight consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2008, if the facility is defined by subdivision (b)(ii) of this subsection. The new ethanol facility shall provide an analysis to the Department of Revenue of samples of the product collected according to procedures specified by the department no later than July 30, 2004, and at least annually thereafter. The analysis shall be prepared by an independent laboratory meeting the International Organization for Standardization standard ISO/IEC 17025:1999. Prior to collecting the samples, the new ethanol facility shall notify the department which may observe the sampling procedures utilized by the new ethanol facility to obtain the samples to be submitted for independent analysis. The minimum rate shall be established for a period of at least thirty days. In this regard, the new ethanol facility must produce at least eight thousand two hundred nineteen gallons of ethanol within a thirty-day period. The ethanol must be finished product which is ready for sale to customers.

(b) For purposes of this subsection, new ethanol facility means a facility for the conversion of grain or other raw feedstock into ethanol and other byproducts of ethanol production which (i) is not in production on or before September 1, 2001, or (ii) has not received credits prior to June 1, 1999. A new ethanol facility does not mean an expansion of an existing ethanol plant that does not result in the physical construction of an entire ethanol processing facility or which shares or uses in a significant manner any existing plant's systems or processes and does not include the expansion of production capacity constructed after June 30, 2004, of a plant qualifying for credits under this subsection. This definition applies to contracts entered into after April 16, 2004.

(c) Not more than fifteen million six hundred twenty-five thousand gallons of ethanol produced annually at an ethanol facility shall be eligible for credits under this subsection. Not more than one hundred twenty-five million gallons of ethanol produced at an ethanol facility by the end of the ninety-six-consecutive-month period or forty-eight-consecutive-month period set forth in this subsection shall be eligible for credits under this subsection.

(3) The credits described in this section shall be given only for ethanol produced at a plant in Nebraska at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced for or sold for use in the production of beverage alcohol. Not more than ten million gallons of ethanol produced during any twelve-consecutive-month period at an ethanol facility shall be eligible for the credit described in subsection (1) of this section. The credits described in this section shall be in the form of a nonrefundable, transferable motor vehicle fuel tax credit certificate. No transfer of credits will be allowed between the ethanol producer and motor vehicle fuel licensees who are related parties.

(4) Ethanol production eligible for credits under this section shall be measured by a device approved by the Division of Weights and Measures of the Department of Agriculture. Confirmation of approval by the division shall be

provided by the ethanol facility at the time the initial claim for credits provided under this section is submitted to the Department of Revenue and annually thereafter. Claims submitted by the ethanol producer shall be based on the total number of gallons of ethanol produced, before denaturing, during the reporting period measured in gross gallons.

(5) The Department of Revenue shall prescribe an application form and procedures for claiming credits under this section. In order for a claim for credits to be accepted, it must be filed by the ethanol producer within three years of the date the ethanol was produced or by September 30, 2012, whichever occurs first.

(6) Every producer of ethanol shall maintain records similar to those required by section 66-487. The ethanol producer must maintain invoices, meter readings, load-out sheets or documents, inventory records, including work-in-progress, finished goods, and denaturant, and other memoranda requested by the Department of Revenue relevant to the production of ethanol. On an annual basis, the ethanol producer shall also be required to furnish the department with copies of the reports filed with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The maintenance of all of this information in a provable computer format or on microfilm is acceptable in lieu of retention of the original documents. The records must be retained for a period of not less than three years after the claim for ethanol credits is filed.

(7) For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commissioner (a) may examine or cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters, (b) may by summons require the attendance of the person responsible for rendering the application or other document or any officer or employee of such person or the attendance of any other person having knowledge in the premises, and (c) may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons. The time and place of examination pursuant to this subsection shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons. No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations. All records obtained pursuant to this subsection shall be subject to the confidentiality requirements and exceptions thereto as provided in section 77-27,119.

(8) To qualify for credits under this section, an ethanol producer shall provide public notice for bids before entering into any contract for the construction of a new ethanol facility. Preference shall be given to a bidder residing in Nebraska when awarding any contract for construction of a new ethanol facility if comparable bids are submitted. For purposes of this subsection, bidder residing in Nebraska means any person, partnership, foreign or domestic limited liability company, association, or corporation authorized to engage in business in the state with employees permanently located in Nebraska. If an ethanol producer enters into a contract for the construction of a new ethanol facility with a bidder who is not a bidder residing in Nebraska, such producer shall demonstrate to the satisfaction of the Department of Revenue in its application for credits that no comparable bid was submitted by a responsible bidder residing

in Nebraska. The department shall deny an application for credits if it is determined that the contract was denied to a responsible bidder residing in Nebraska without cause.

(9) The pertinent provisions of Chapter 66, article 7, relating to the administration and imposition of motor fuel taxes shall apply to the administration and imposition of assessments made by the Department of Revenue relating to excess credits claimed by ethanol producers under the Ethanol Development Act. These provisions include, but are not limited to, issuance of a deficiency following an examination of records, an assessment becoming final after sixty days absent a written protest, presumptions regarding the burden of proof, issuance of deficiency within three years of original filing, issuance of notice by registered or certified mail, issuance of penalties and waiver thereof, issuance of interest and waiver thereof, and issuance of corporate officer or employee or limited liability company manager or member assessments. For purposes of determining interest and penalties, the due date will be considered to be the date on which the credits were used by the licensees to whom the credits were transferred.

(10) If a written protest is filed by the ethanol producer with the department within the sixty-day period in subsection (9) of this section, the protest shall: (a) Identify the ethanol producer; (b) identify the proposed assessment which is being protested; (c) set forth each ground under which a redetermination of the department's position is requested together with facts sufficient to acquaint the department with the exact basis thereof; (d) demand the relief to which the ethanol producer considers itself entitled; and (e) request that an evidentiary hearing be held to determine any issues raised by the protest if the ethanol producer desires such a hearing.

(11) For applications received after April 16, 2004, an ethanol facility receiving benefits under the Ethanol Development Act shall not be eligible for benefits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Act, or the ImagiNE Nebraska Act.

Source: Laws 1990, LB 1124, § 1; Laws 1992, LB 754, § 8; R.S.Supp.,1992, § 66-1326; Laws 1993, LB 364, § 15; Laws 1994, LB 961, § 1; Laws 1995, LB 377, § 7; Laws 1996, LB 1121, § 13; Laws 1999, LB 605, § 1; Laws 2001, LB 536, § 2; Laws 2004, LB 479, § 5; Laws 2004, LB 1065, § 5; Laws 2005, LB 312, § 2; Laws 2008, LB914, § 5; Laws 2019, LB302, § 79; Laws 2020, LB1107, § 120.

Cross References

Employment and Investment Growth Act, see section 77-4101.
ImagiNE Nebraska Act, see section 77-6801.
Invest Nebraska Act, see section 77-5501.
Nebraska Advantage Act, see section 77-5701.

66-1351 Treated seed; use prohibited; when.

The use of seed that is treated, as defined in section 81-2,147.01, in the production of agricultural ethyl alcohol shall be prohibited if such use results in the generation of a byproduct that is deemed unsafe for livestock consumption or land application.

Source: Laws 2021, LB507, § 8.

66-1352 Toxic chemicals; University of Nebraska conduct assessment.

The University of Nebraska shall conduct an assessment of the environmental and human health effects of toxic chemicals. The assessment shall include:

(1) An evaluation of adverse long-term environmental, ecological, and human health effects of the chemicals released during (a) the production of ethanol made from grain or seed treated with pesticide and (b) the storage of byproducts created by the production of ethanol made from grain or seed treated with pesticide; and

(2) An assessment of the effects of polluted ground water, soil, and air relating to any ethanol production facility.

Source: Laws 2022, LB1068, § 3.
Effective date April 19, 2022.

ARTICLE 14

INTERNATIONAL FUEL TAX AGREEMENT ACT

Section
66-1401. Act, how cited.
66-1406.02. License; director; powers.
66-1421. Filing of amended return; interest; waiver of penalty; waiver of interest.
66-1424. Department; examine return; deficiency; final assessment; challenge; extension.
66-1428. Taxes, interest, and penalties; remittance.

66-1401 Act, how cited.

Sections 66-1401 to 66-1428 shall be known and may be cited as the International Fuel Tax Agreement Act.

Source: Laws 1988, LB 836, § 1; Laws 1996, LB 1218, § 22; Laws 1998, LB 1056, § 3; Laws 2004, LB 983, § 60; Laws 2018, LB177, § 4; Laws 2022, LB750, § 75.
Operative date July 21, 2022.

66-1406.02 License; director; powers.

(1) The director may suspend, revoke, cancel, or refuse to issue or renew a license under the International Fuel Tax Agreement Act:

(a) If the applicant's or licensee's registration certificate issued pursuant to the International Registration Plan Act has been suspended, revoked, or canceled or the director refused to issue or renew such certificate;

(b) If the applicant or licensee is in violation of sections 75-392 to 75-3,100;

(c) If the applicant's or licensee's security has been canceled;

(d) If the applicant or licensee failed to provide additional security as required;

(e) If the applicant or licensee failed to file any report or return required by the motor fuel laws, filed an incomplete report or return required by the motor fuel laws, did not file any report or return required by the motor fuel laws electronically, or did not file a report or return required by the motor fuel laws on time;

(f) If the applicant or licensee failed to pay taxes required by the motor fuel laws due within the time provided;

(g) If the applicant or licensee filed any false report, return, statement, or affidavit, required by the motor fuel laws, knowing it to be false;

(h) If the applicant or licensee would no longer be eligible to obtain a license; or

(i) If the applicant or licensee committed any other violation of the International Fuel Tax Agreement Act or the rules and regulations adopted and promulgated under the act.

(2) Prior to taking any action pursuant to subsection (1) of this section, the director shall notify and advise the applicant or licensee of the proposed action and the reasons for such action in writing, by regular United States mail, to his or her last-known business address as shown on the application or license. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or licensee may, within thirty days after the mailing of the notice, petition the director in writing for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the Department of Motor Vehicles. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or licensee may show cause why the proposed action should not be taken. The director shall give the applicant or licensee reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or licensee, the applicant or licensee may appeal the decision in accordance with the Administrative Procedure Act.

(4) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if, in the judgment of the director, the applicant or licensee has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the license without delay. An applicant for reinstatement, issuance, or renewal of a license within three years after the date of suspension, revocation, cancellation, or refusal to issue or renew shall submit a fee of one hundred dollars to the director. The director shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(7) Suspension of, revocation of, cancellation of, or refusal to issue or renew a license by the director shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

(8) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates issued pursuant to section 60-3,198 to the department. If any person fails to return the registration certificate and

license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 1998, LB 1056, § 5; Laws 2003, LB 563, § 38; Laws 2006, LB 853, § 22; Laws 2007, LB358, § 11; Laws 2009, LB331, § 13; Laws 2012, LB751, § 47; Laws 2020, LB944, § 75.

Cross References

Administrative Procedure Act, see section 84-920.
International Registration Plan Act, see section 60-3,192.

66-1421 Filing of amended return; interest; waiver of penalty; waiver of interest.

(1)(a) No penalty shall be imposed upon any person who voluntarily reports an underpayment of tax by filing an amended return if the original return is filed on time.

(b) Except as provided in subsection (3) of this section, interest shall not be waived on any additional tax due as reported on any amended return, and such interest shall be computed from the date such tax was due.

(2) The department may in its discretion waive all or any portion of the penalties incurred upon sufficient showing by the taxpayer that the failure to file or pay is not due to negligence, intentional disregard of the law, rules, or regulations, intentional evasion of the tax, or fraud committed with intent to evade the tax or that such penalties should otherwise be waived.

(3) The department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived.

Source: Laws 2018, LB177, § 7; Laws 2022, LB750, § 76.
Operative date July 21, 2022.

66-1424 Department; examine return; deficiency; final assessment; challenge; extension.

(1) As soon as practical after a return is filed, the department shall examine it to determine the correct amount of tax. If the department finds that the amount of tax shown on the return is less than the correct amount, it shall notify the taxpayer of the amount of the deficiency determined.

(2) If any person fails to file a return or has improperly purchased motor fuel without the payment of tax, the department may estimate the person's liability from any available information and notify the person of the amount of the deficiency determined.

(3) The amount of the deficiency determined shall constitute a final assessment together with interest and penalties thirty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the department within such thirty-day period.

(4) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of the Administrative Procedure Act.

(5) An assessment made by the department shall be presumed to be correct. In any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

(6)(a) Except in the case of a fraudulent return or of neglect or refusal to make a return, the notice of a proposed deficiency determination shall be mailed within three years after the last day of the month following the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever period expires later.

(b) The taxpayer and the department may agree, prior to the expiration of the period in subdivision (a) of this subsection, to extend the period during which the notice of a deficiency determination can be mailed. The extension of the period for the mailing of a deficiency determination shall also extend the period during which a refund can be claimed.

Source: Laws 2018, LB177, § 10; Laws 2020, LB944, § 76.

Cross References

Administrative Procedure Act, see section 84-920.

66-1428 Taxes, interest, and penalties; remittance.

All taxes, interest, and penalties collected pursuant to the International Fuel Tax Agreement Act shall be remitted to the State Treasurer for credit to the Highway Trust Fund, except as otherwise provided under the act or an agreement entered into pursuant to the act.

Source: Laws 2022, LB750, § 77.
Operative date July 21, 2022.

ARTICLE 15

PETROLEUM RELEASE REMEDIAL ACTION

Section
66-1504. Department, defined.
66-1509. Owner, defined.
66-1518. Rules and regulations; schedule of rates; use.
66-1519. Petroleum Release Remedial Action Cash Fund; created; use; investment.
66-1521. Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment.
66-1523. Reimbursement; amount; limitations; Prompt Payment Act applicable.
66-1525. Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required.
66-1529.02. Remedial actions by department; third-party claims; recovery of expenses.

66-1504 Department, defined.

Department shall mean the Department of Environment and Energy.

Source: Laws 1989, LB 289, § 4; Laws 1993, LB 3, § 38; Laws 2019, LB302, § 80.

66-1509 Owner, defined.

(1) Owner shall mean:

(a) In the case of a tank in use on or after November 8, 1984, or brought into use after such date, any person who owns a tank used for the storage, use, or dispensing of petroleum; and

(b) In the case of a tank in use before November 8, 1984, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

(2) Owner shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining, and marketing:

(a) Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(b) Acquires ownership of a tank or the property on or within which a tank is or was located:

(i) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

(ii) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

(3) Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a voidable transfer, as provided in the Uniform Voidable Transactions Act.

Source: Laws 1989, LB 289, § 9; Laws 1991, LB 409, § 4; Laws 1996, LB 1226, § 3; Laws 2019, LB70, § 16.

Cross References

Uniform Voidable Transactions Act, see section 36-801.

66-1518 Rules and regulations; schedule of rates; use.

(1) The Environmental Quality Council shall adopt and promulgate rules and regulations governing reimbursements authorized under the Petroleum Release Remedial Action Act. Such rules and regulations shall include:

(a) Procedures regarding the form and procedure for application for payment or reimbursement from the fund, including the requirement for timely filing of applications;

(b) Procedures for the requirement of submitting cost estimates for phases or stages of remedial actions, procurement requirements to be followed by responsible persons, and requirements for reuse of fixtures and tangible personal property by responsible persons during a remedial action;

(c) Procedures for investigation of claims for payment or reimbursement;

(d) Procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund;

(e) Procedures for auditing persons who have received payments from the fund;

(f) Procedures for reducing reimbursements made for a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements. Reimbursement may be reduced as much as one hundred percent; and

(g) Other procedures necessary to carry out the act.

(2) The Director of Environment and Energy shall (a) estimate the cost to complete remedial action at each petroleum contaminated site where the responsible party has been ordered by the department to begin remedial action, and, based on such estimates, determine the total cost that would be incurred

in completing all remedial actions ordered; (b) determine the total estimated cost of all approved remedial actions; (c) determine the total dollar amount of all pending claims for payment or reimbursement; (d) determine the total of all funds available for reimbursement of pending claims; and (e) include the determinations made pursuant to this subsection in the department's annual report to the Legislature.

(3) The Department of Environment and Energy shall make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall consider the schedule of reasonable rates in reviewing all costs for the remedial action which are submitted in a plan. The rates shall be used to determine the amount of reimbursement for the eligible and reasonable costs of the remedial action, except that (a) the reimbursement for the costs of the remedial action shall not exceed the actual eligible and reasonable costs incurred by the responsible person or his or her designated representative and (b) reimbursement may be made for costs which exceed or are not included on the schedule of reasonable rates if the application for such reimbursement is accompanied by sufficient evidence for the department to determine and the department does determine that such costs are reasonable.

Source: Laws 1989, LB 289, § 18; Laws 1991, LB 409, § 11; Laws 1993, LB 3, § 39; Laws 1994, LB 1349, § 9; Laws 1996, LB 1226, § 6; Laws 1997, LB 517, § 2; Laws 1998, LB 1161, § 27; Laws 1999, LB 270, § 1; Laws 2001, LB 461, § 2; Laws 2009, LB154, § 14; Laws 2019, LB302, § 81.

66-1519 Petroleum Release Remedial Action Cash Fund; created; use; investment.

(1) There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(a) The fees imposed by sections 66-1520 and 66-1521;

(b) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(c) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

(2) Money in the fund may be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, and on or before June 30, 2024, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; (g) claims approved by the State Claims Board authorized under section 66-1531; (h) the direct and indirect costs incurred by the

department in responding to spills and other environmental emergencies related to petroleum or petroleum products; and (i) up to one million five hundred thousand dollars each fiscal year of the department's cost-share obligations and operation and maintenance obligations under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq.

(3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General Fund at the direction of the Legislature.

(4) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the Superfund Cost Share Cash Fund at the direction of the Legislature.

(5) Any money in the Petroleum Release Remedial Action Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 289, § 19; Laws 1991, LB 409, § 12; Laws 1993, LB 237, § 1; Laws 1994, LB 1066, § 57; Laws 1996, LB 1226, § 7; Laws 1998, LB 1161, § 28; Laws 1999, LB 270, § 2; Laws 2001, LB 461, § 3; Laws 2002, LB 1003, § 41; Laws 2002, LB 1310, § 7; Laws 2003, LB 367, § 2; Laws 2004, LB 962, § 105; Laws 2004, LB 1065, § 9; Laws 2005, LB 40, § 4; Laws 2008, LB1145, § 1; Laws 2009, LB154, § 15; Laws 2011, LB2, § 6; Laws 2011, LB29, § 2; Laws 2012, LB873, § 1; Laws 2016, LB887, § 1; Laws 2017, LB331, § 34; Laws 2020, LB858, § 14.

Cross References

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

66-1521 Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment.

(1) A petroleum release remedial action fee is hereby imposed upon the producer, refiner, importer, distributor, wholesaler, or supplier who engages in the sale, distribution, delivery, and use of petroleum within this state, except that the fee shall not be imposed on petroleum that is exported. The fee shall also be imposed on diesel fuel which is indelibly dyed. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuel as defined in section 66-482 and three-tenths of one cent per gallon on diesel fuel as defined in section 66-482. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. The fee shall be paid by all producers, refiners, importers, distributors, wholesalers, and suppliers subject to the fee by filing a monthly return on or before the twentieth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee except for the

treatment given refunds. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported, destroyed, or purchased for use by the United States Government or its agencies. The department may also adjust for all errors in the payment of the fee. In each calendar year, no claim for refund related to the fee can be for an amount less than ten dollars.

(2) No producer, refiner, importer, distributor, wholesaler, or supplier shall engage in the sale, distribution, delivery, or use of petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Department of Revenue upon a form prepared and furnished by the Department of Revenue. If the applicant is an individual, the application shall include the applicant's social security number. Failure to obtain a license prior to engaging in the sale, distribution, delivery, or use of petroleum shall be a Class IV misdemeanor. The Department of Revenue may suspend or cancel the license of any producer, refiner, importer, distributor, wholesaler, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

(3) The Department of Revenue may adopt and promulgate rules and regulations necessary to carry out this section.

(4) The Department of Revenue shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed one hundred fifty thousand dollars for each fiscal year. The one hundred fifty thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Petroleum Release Remedial Action Collection Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The Department of Revenue shall collect the fee imposed by subsection (1) of this section.

Source: Laws 1989, LB 289, § 21; Laws 1991, LB 409, § 14; Laws 1991, LB 627, § 139; Laws 1994, LB 1066, § 58; Laws 1994, LB 1160, § 120; Laws 1997, LB 752, § 153; Laws 1998, LB 1161, § 31; Laws 2000, LB 1067, § 31; Laws 2004, LB 983, § 66; Laws 2009, LB165, § 1; Laws 2009, First Spec. Sess., LB3, § 41; Laws 2012, LB727, § 26; Laws 2019, LB512, § 9.

Cross References

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

66-1523 Reimbursement; amount; limitations; Prompt Payment Act applicable.

(1) Except as provided in subsection (2) of this section, the department shall provide reimbursement from the fund in accordance with section 66-1525 to

eligible responsible persons for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2024, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred seventy-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first ten thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2024, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred eighty-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by

the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements with interest shall be made when the fund is sufficiently replenished in the order in which the applications for them were received by the department, except that an application pending before the department on January 1, 1996, submitted by a local government as defined in section 13-2202 shall, after July 1, 1996, be reimbursed first when funds are available. This exception applies only to local government applications pending on and not submitted after January 1, 1996.

(5) Applications for reimbursement properly made before, on, or after April 16, 1996, shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) There shall be no reimbursement from the fund for the cost of remedial action or for the cost of paying third-party claims for any releases reported on or after July 1, 2024.

(7) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Source: Laws 1989, LB 289, § 23; Laws 1991, LB 409, § 16; Laws 1993, LB 237, § 2; Laws 1996, LB 1226, § 9; Laws 1998, LB 1161, § 32; Laws 1999, LB 270, § 3; Laws 2001, LB 461, § 4; Laws 2004, LB 962, § 106; Laws 2008, LB1145, § 2; Laws 2012, LB873, § 2; Laws 2016, LB887, § 2; Laws 2020, LB858, § 15.

Cross References

Prompt Payment Act, see section 81-2401.

66-1525 Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required.

(1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1983, and on or before June 30, 2024, or against whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.

(2) No reimbursement may be made unless the department makes the following eligibility determinations:

(a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

(b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

(c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

(d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;

(e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

(f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.

(4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

(a) The extent of and reasons for noncompliance;

(b) The likely environmental impact of the noncompliance; and

(c) Whether noncompliance was negligent, knowing, or willful.

(6) Except as provided in subsection (4) of this section, the department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

Source: Laws 1989, LB 289, § 25; Laws 1991, LB 409, § 17; Laws 1993, LB 237, § 3; Laws 1994, LB 1349, § 10; Laws 1996, LB 1226, § 11; Laws 1998, LB 1161, § 33; Laws 1999, LB 270, § 4; Laws 2001, LB 461, § 5; Laws 2004, LB 962, § 107; Laws 2008, LB1145, § 3; Laws 2012, LB873, § 3; Laws 2016, LB887, § 3; Laws 2020, LB858, § 16.

Cross References

Environmental Protection Act, see section 81-1532.
Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

66-1529.02 Remedial actions by department; third-party claims; recovery of expenses.

(1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, and on or before June 30, 2024, with money available in the fund if:

(a) The responsible person cannot be identified or located;

(b) An identified responsible person cannot or will not comply with the remedial action requirements; or

(c) Immediate remedial action is necessary, as determined by the Director of Environment and Energy, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's

claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Source: Laws 1991, LB 409, § 19; Laws 1993, LB 3, § 41; Laws 1993, LB 237, § 4; Laws 1998, LB 1161, § 35; Laws 1999, LB 270, § 5; Laws 2001, LB 461, § 6; Laws 2004, LB 962, § 108; Laws 2008, LB1145, § 4; Laws 2012, LB873, § 4; Laws 2016, LB887, § 4; Laws 2019, LB302, § 82; Laws 2020, LB858, § 17.

ARTICLE 20

NATURAL GAS FUEL BOARD

Section
66-2001. Natural Gas Fuel Board; established; members; terms; vacancy; meetings; duties; Department of Environment and Energy; administrative support.

66-2001 Natural Gas Fuel Board; established; members; terms; vacancy; meetings; duties; Department of Environment and Energy; administrative support.

(1) The Natural Gas Fuel Board is hereby established to advise the Department of Environment and Energy regarding the promotion of natural gas as a motor vehicle fuel in Nebraska. The board shall provide recommendations relating to:

(a) Distribution, infrastructure, and workforce development for natural gas to be used as a motor vehicle fuel;

(b) Loans, grants, and tax incentives to encourage the use of natural gas as a motor vehicle fuel for individuals and public and private fleets; and

(c) Such other matters as it deems appropriate.

(2) The board shall consist of eight members appointed by the Governor. The Governor shall make the initial appointments by October 1, 2012. The board shall include:

(a) One member representing a jurisdictional utility as defined in section 66-1802;

(b) One member representing a metropolitan utilities district;

(c) One member representing the interests of the transportation industry in the state;

(d) One member representing the interests of the business community in the state, specifically fueling station owners or operators;

(e) One member representing natural gas marketers or pipelines in the state;

(f) One member representing automobile dealerships or repair businesses in the state;

(g) One member representing labor interests in the state; and

(h) One member representing environmental interests in the state, specifically air quality.

(3) All appointments shall be subject to the approval of a majority of the members of the Legislature if the Legislature is in session, and if the Legislature is not in session, any appointment to fill a vacancy shall be temporary until the next session of the Legislature, at which time a majority of the members of the Legislature may approve or disapprove such appointment.

(4) Members shall be appointed for terms of four years, except that of the initial appointees the terms of the members representing a jurisdictional utility and a metropolitan utilities district shall expire on September 30, 2015, the terms of the members representing the transportation industry, the business community, natural gas marketers or pipelines, and automobile dealerships or repair businesses shall expire on September 30, 2014, and the terms of the members representing labor and environmental interests shall expire on September 30, 2013. Members may be reappointed. A member shall serve until a successor is appointed and qualified.

(5) A vacancy on the board shall exist in the event of death, disability, resignation, or removal for cause of a member. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made by the Governor with the approval of a majority of the Legislature, and any person so appointed shall have the same qualifications as the person whom he or she succeeds.

(6) The board shall meet at least once annually.

(7) The members shall not be reimbursed for expenses associated with carrying out their duties as members.

(8) The department shall provide administrative support to the board as necessary so that the board may carry out its duties.

Source: Laws 2012, LB1087, § 1; Laws 2019, LB302, § 83.

ARTICLE 22

RENEWABLE FUEL INFRASTRUCTURE PROGRAM

Section
66-2201. Terms, defined.
66-2202. Renewable Fuel Infrastructure Program; created.
66-2203. Grant; application; ethanol infrastructure project; eligibility for grant.
66-2204. Application; contents.
66-2205. Department; determine amount of grants; cost-share agreement; award; limitation.
66-2206. Retail motor fuel site; requirements.
66-2207. Renewable Fuel Infrastructure Fund; created; use; investment.

66-2201 Terms, defined.

For purposes of sections 66-2201 to 66-2207:

(1) Department means the Department of Environment and Energy;

(2) E-15 means a blend of ethanol and gasoline in which ethanol comprises fifteen percent of the blend by volume;

(3) E-85 means a blend of ethanol and gasoline in which ethanol comprises seventy percent or more of the blend by volume;

(4) Motor fuel pump means a meter or similar commercial weighing and measuring device used to measure and dispense motor fuel originating from a motor fuel storage tank;

(5) Program means the Renewable Fuel Infrastructure Program created in section 66-2202;

(6) Retail dealer means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis; and

(7) Retail motor fuel site means a geographic location in this state where a retail dealer sells and dispenses motor fuel from a motor fuel pump on a retail basis.

Source: Laws 2019, LB585, § 1.

66-2202 Renewable Fuel Infrastructure Program; created.

The Renewable Fuel Infrastructure Program is created. The purpose of the program is to improve retail motor fuel sites by installing, replacing, or converting ethanol infrastructure to be used to store, blend, or dispense renewable fuel. The program shall function as a grant program administered by the department. Grant applications shall be made on a form prescribed by the department. Grant funds shall be distributed to eligible persons for eligible ethanol infrastructure projects under the requirements in section 66-2203.

Source: Laws 2019, LB585, § 2.

66-2203 Grant; application; ethanol infrastructure project; eligibility for grant.

(1) A person shall be eligible to apply for a grant under the program if the person is an owner or operator of a retail motor fuel site.

(2) An ethanol infrastructure project shall be eligible for a grant under the program if such project is:

(a) Designed and used exclusively to store and dispense E-15 gasoline or E-85 gasoline or a blend of ethanol and gasoline from a motor fuel pump designed to blend such motor fuels together in blends higher than E-15. Such E-15 gasoline shall be a registered fuel recognized by the United States Environmental Protection Agency;

(b) On the premises of a retail motor fuel site; and

(c) Subject to a cost-share agreement as described in section 66-2205.

(3) An ethanol infrastructure project shall not be eligible for a grant under the program if such infrastructure includes a tank vehicle.

Source: Laws 2019, LB585, § 3.

66-2204 Application; contents.

Any eligible person applying for a grant under the program shall include the following information in the application:

(1) The name of the person and the address of the retail motor fuel site to be improved;

(2) A detailed description of the infrastructure to be installed, replaced, or converted, including, but not limited to, the model number of each motor fuel storage tank to be installed, replaced, or converted, if available;

(3) A statement describing how the retail motor fuel site is to be improved, the estimated cost of the planned improvement, and the date when the infrastructure will be first used; and

(4) A statement certifying the infrastructure project complies with section 66-2203 and will comply with a cost-share agreement entered into with the department pursuant to section 66-2205 unless granted a waiver by the department.

Source: Laws 2019, LB585, § 4.

66-2205 Department; determine amount of grants; cost-share agreement; award; limitation.

(1) The department shall determine the amount of the grants to be awarded under the program. The department shall award grants to the maximum number of qualified applicants and may approve up to one million dollars in grants in any calendar year.

(2) The department shall approve and execute a cost-share agreement according to terms and conditions set by the department with an eligible person whose application is approved by the department for such grant. Such cost-share agreement shall state the total costs related to improving a retail motor fuel site, the amount of the grant, and whether the agreement is for a three-year or five-year period.

(3) In awarding grants under the program, an award shall not exceed (a) fifty percent of the estimated cost of the improvement or thirty thousand dollars, whichever is less, for a three-year cost-share agreement, or (b) seventy percent of the estimated costs of making the improvement or fifty thousand dollars, whichever is less, for a five-year cost-share agreement. The department may approve multiple improvements to the same retail motor fuel site so long as the total amount of the grants does not exceed the limitations in this subsection.

Source: Laws 2019, LB585, § 5.

66-2206 Retail motor fuel site; requirements.

A retail motor fuel site that is improved using grants under the program shall comply with federal and state standards governing new or upgraded motor fuel storage tanks used to store and dispense renewable fuels. A retail motor fuel site that is improved using grants under the program shall not use such infrastructure to store and dispense motor fuel other than the type of renewable fuel approved by the department in the cost-share agreement, unless granted a waiver by the department.

Source: Laws 2019, LB585, § 6.

66-2207 Renewable Fuel Infrastructure Fund; created; use; investment.

The Renewable Fuel Infrastructure Fund is created. The fund shall consist of appropriations made by the Legislature, transfers authorized by the Legislature, grants, and any contributions designated for the purpose of the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The fund shall be administered by the department and used to award grants under the program. No more than ten percent of the fund shall be used for administration of the program.

Source: Laws 2019, LB585, § 7.

Cross References

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

ARTICLE 23
HYDROGEN HUBS

Section
66-2301. Nebraska Hydrogen Hub Industry Work Group; members; duties.

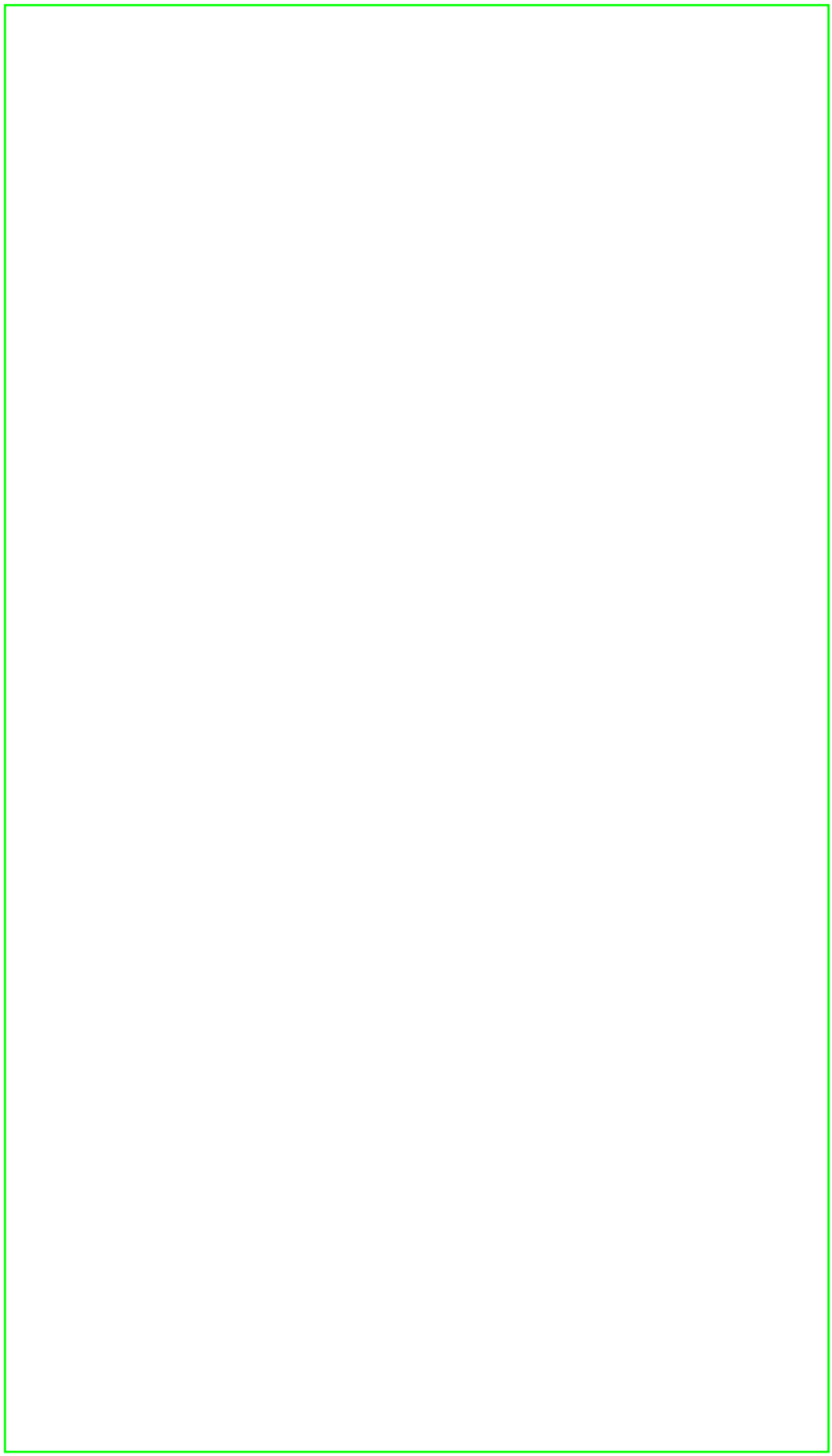
66-2301 Nebraska Hydrogen Hub Industry Work Group; members; duties.

(1) The Department of Economic Development shall create the Nebraska Hydrogen Hub Industry Work Group. The Governor shall appoint members to the work group that include, but are not limited to, representatives from the following sectors: (a) Manufacturing or industry, (b) agriculture, (c) transportation, and (d) energy. The work group may include a representative of a clean hydrogen manufacturer.

(2) The purpose of the work group is to develop and draft a competitive proposal which may be submitted to the United States Department of Energy to be selected as one of the four regional clean hydrogen hubs authorized under the federal Infrastructure Investment and Jobs Act, Public Law 117-58.

(3) The Department of Economic Development may contract with private consultants to create the competitive proposal. Specifically, the work group shall determine how to maximize the state's geographic location to connect a nationwide hydrogen network. Additionally, the work group shall build a plan to make the case for an agricultural-based clean hydrogen hub, expanding the existing eligible purposes.

Source: Laws 2022, LB1099, § 1.
Effective date March 17, 2022.



CHAPTER 67
PARTNERSHIPS

ARTICLE 2

NEBRASKA UNIFORM LIMITED PARTNERSHIP ACT

PART XI—MISCELLANEOUS

PART XI—MISCELLANEOUS

67-293 Filing fees; disposition.

The filing fee for all filings pursuant to the Nebraska Uniform Limited Partnership Act, including amendments and name reservation, shall be thirty dollars if the filing is submitted in writing and twenty-five dollars if the filing is submitted electronically pursuant to section 84-511, except that the filing fee for filing a certificate of limited partnership pursuant to section 67-240 and for filing an application for registration as a foreign limited partnership pursuant to section 67-281 shall be one hundred ten dollars if the filing is submitted in writing and one hundred dollars if the filing is submitted electronically pursuant to section 84-511. A fee of one dollar per page 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 by him or her remitted to the State Treasurer. The State Treasurer shall credit sixty percent of such fees to the General Fund and forty percent of such fees to the Secretary of State Cash Fund.

Source: Laws 1981, LB 272, § 61; Laws 1983, LB 617, § 12; Laws 1989, LB 482, § 60; Laws 1990, LB 1228, § 8; Laws 1994, LB 1004, § 6; Laws 1994, LB 1066, § 59; Laws 2003, LB 357, § 10; Laws 2020, LB910, § 27.

ARTICLE 4

UNIFORM PARTNERSHIP ACT OF 1998

PART XII—MISCELLANEOUS PROVISIONS

PART XII—MISCELLANEOUS PROVISIONS

67-462 Fees.

The filing fee for filing a statement of partnership authority pursuant to section 67-415, a statement of qualification pursuant to section 67-454, or a statement of foreign qualification pursuant to section 67-458 is one hundred ten dollars if the filing is submitted in writing and one hundred dollars if the filing is submitted electronically pursuant to section 84-511. The filing fee for all other filings by partnerships or limited liability partnerships pursuant to the Uniform Partnership Act of 1998 is thirty dollars if the filing is submitted in writing and twenty-five dollars if the filing is submitted electronically pursuant to section 84-511. A fee of one dollar per page shall be paid for a certified copy of any document on file pursuant to the act and ten dollars for the certificate. The filing fees pursuant to the act shall be paid to the Secretary of State and remitted to the State Treasurer. The State Treasurer shall credit sixty percent of the fees to the General Fund and forty percent of the fees to the Secretary of State Cash Fund.

Source: Laws 1997, LB 523, § 62; Laws 2020, LB910, § 28.

CHAPTER 68
PUBLIC ASSISTANCE

Article.
9. Medical Assistance Act. 68-901 to 68-9,101.
10. Assistance, Generally.
(b) Procedure and Penalties. 68-1017.02.
11. Aging.
(a) Advisory Committee on Aging. 68-1105.
(c) Aging and Disability Resource Center Act. 68-1114 to 68-1119.
12. Social Services. 68-1201 to 68-1216.
15. Disabled Persons and Family Support.
(c) Family Support Program. 68-1529 to 68-1534.
17. Welfare Reform.
(a) Welfare Reform Act. 68-1724.

ARTICLE 9
MEDICAL ASSISTANCE ACT

Section
68-901. Medical Assistance Act; act, how cited.
68-911. Medical assistance; mandated and optional coverage; department; submit state plan amendment or waiver.
68-914. Application for medical assistance; form; department; decision; notice; requirements; appeal.
68-915. Eligibility.
68-919. Medical assistance recipient; liability; when; claim; procedure; department; powers; recovery of medical assistance reimbursement; procedure.
68-953. Preferred drug list; department; establish and maintain; pharmaceutical and therapeutics committee; members; expenses.
68-955. Prescription of drug not on preferred drug list; conditions; antidepressant, antipsychotic, or anticonvulsant prescription drug; prior authorization; not required, when.
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Section
68-9,100. Hospital and nursing facility services; reimbursement; rate methodology; rules and regulations.
68-9,101. Multiple procedure payment reduction policy; implementation; when prohibited.

68-901 Medical Assistance Act; act, how cited.

Sections 68-901 to 68-9,101 shall be known and may be cited as the Medical Assistance Act.

Source: Laws 2006, LB 1248, § 1; Laws 2008, LB830, § 1; Laws 2009, LB27, § 1; Laws 2009, LB288, § 18; Laws 2009, LB342, § 1; Laws 2009, LB396, § 1; Laws 2010, LB1106, § 1; Laws 2011, LB525, § 1; Laws 2012, LB541, § 1; Laws 2012, LB599, § 2; Laws 2015, LB500, § 1; Laws 2016, LB698, § 15; Laws 2017, LB268, § 10; Laws 2017, LB578, § 1; Initiative Law 2018, No. 427, § 1; Laws 2019, LB468, § 1; Laws 2019, LB726, § 1; Laws 2020, LB956, § 1; Laws 2020, LB1002, § 43; Laws 2020, LB1053, § 1; Laws 2020, LB1158, § 1; Laws 2021, LB100, § 1.

68-911 Medical assistance; mandated and optional coverage; department; submit state plan amendment or waiver.

(1) Medical assistance shall include coverage for health care and related services as required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Inpatient and outpatient hospital services;

(b) Laboratory and X-ray services;

(c) Nursing facility services;

(d) Home health services;

(e) Nursing services;

(f) Clinic services;

(g) Physician services;

(h) Medical and surgical services of a dentist;

(i) Nurse practitioner services;

(j) Nurse midwife services;

(k) Pregnancy-related services;

(l) Medical supplies;

(m) Mental health and substance abuse services;

(n) Early and periodic screening and diagnosis and treatment services for children which shall include both physical and behavioral health screening, diagnosis, and treatment services;

(o) Rural health clinic services; and

(p) Federally qualified health center services.

(2) In addition to coverage otherwise required under this section, medical assistance may include coverage for health care and related services as permitted but not required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Prescribed drugs;

(b) Intermediate care facilities for persons with developmental disabilities;

(c) Home and community-based services for aged persons and persons with disabilities;

(d) Dental services;

(e) Rehabilitation services;

(f) Personal care services;

(g) Durable medical equipment;

(h) Medical transportation services;

(i) Vision-related services;

(j) Speech therapy services;

(k) Physical therapy services;

(l) Chiropractic services;

(m) Occupational therapy services;

(n) Optometric services;

(o) Podiatric services;

(p) Hospice services;

(q) Mental health and substance abuse services;

(r) Hearing screening services for newborn and infant children; and

(s) Administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.

(3) No later than July 1, 2009, the department shall submit a state plan amendment or waiver to the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program for community-based secure residential and subacute behavioral health services for all eligible recipients, without regard to whether the recipient has been ordered by a mental health board under the Nebraska Mental Health Commitment Act to receive such services.

(4) On or before October 1, 2014, the department, after consultation with the State Department of Education, shall submit a state plan amendment to the federal Centers for Medicare and Medicaid Services, as necessary, to provide that the following are direct reimbursable services when provided by school districts as part of an individualized education program or an individualized family service plan: Early and periodic screening, diagnosis, and treatment services for children; medical transportation services; mental health services; nursing services; occupational therapy services; personal care services; physical therapy services; rehabilitation services; speech therapy and other services for individuals with speech, hearing, or language disorders; and vision-related services.

(5) No later than January 1, 2023, the department shall provide coverage for continuous glucose monitors under the medical assistance program for all eligible recipients who have a prescription for such device.

Source: Laws 1965, c. 397, § 4, p. 1277; Laws 1967, c. 413, § 1, p. 1278; Laws 1969, c. 542, § 1, p. 2193; Laws 1993, LB 804, § 1; Laws 1993, LB 808, § 1; Laws 1996, LB 1044, § 315; Laws 1998, LB 1063, § 5; Laws 1998, LB 1073, § 60; Laws 2002, Second Spec.

Sess., LB 8, § 1; R.S.1943, (2003), § 68-1019; Laws 2006, LB 1248, § 11; Laws 2009, LB603, § 1; Laws 2013, LB23, § 12; Laws 2013, LB556, § 5; Laws 2014, LB276, § 4; Laws 2022, LB698, § 1; Laws 2022, LB855, § 1.
Effective date July 21, 2022.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB698, section 1, with LB855, section 1, to reflect all amendments.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

68-914 Application for medical assistance; form; department; decision; notice; requirements; appeal.

(1) An applicant for medical assistance shall file an application with the department in a manner and form prescribed by the department. The department shall process each application to determine whether the applicant is eligible for medical assistance. The department shall provide a determination of eligibility for medical assistance in a timely manner in compliance with 42 C.F.R. 435.911, including, but not limited to, a timely determination of eligibility for coverage of an emergency medical condition, such as labor and delivery.

(2) The department shall notify an applicant for or recipient of medical assistance of any decision of the department to deny or discontinue eligibility or to deny or modify medical assistance. Except in the case of an emergency, the notice shall be mailed on the same day as or the day after the decision is made. In addition to mailing the notice, the department may also deliver the notice by any form of electronic communication if the department has the agreement of the recipient to receive such notice by means of such form of electronic communication. Decisions of the department, including the failure of the department to act with reasonable promptness, may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) Notice of a decision to discontinue eligibility or to modify medical assistance shall include an explanation of the proposed action, the reason for the proposed action, the information used to make the decision including specific regulations or laws requiring such action, contact information for personnel of the department to address questions regarding the action, information on the right to appeal, and an explanation of the availability of continued benefits pending such appeal.

Source: Laws 2006, LB 1248, § 14; Laws 2011, LB494, § 1; Laws 2020, LB956, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

68-915 Eligibility.

The following persons shall be eligible for medical assistance:

(1) Dependent children as defined in section 43-504;

(2) Aged, blind, and disabled persons as defined in sections 68-1002 to 68-1005;

(3) Children under nineteen years of age who are eligible under section 1905(a)(i) of the federal Social Security Act;

(4) Persons who are presumptively eligible as allowed under sections 1920 and 1920B of the federal Social Security Act;

(5) Children under nineteen years of age with a family income equal to or less than two hundred percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources, and pregnant women with a family income equal to or less than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources. Children described in this subdivision and subdivision (6) of this section shall remain eligible for six consecutive months from the date of initial eligibility prior to redetermination of eligibility. The department may review eligibility monthly thereafter pursuant to rules and regulations adopted and promulgated by the department. The department may determine upon such review that a child is ineligible for medical assistance if such child no longer meets eligibility standards established by the department;

(6) For purposes of Title XIX of the federal Social Security Act as provided in subdivision (5) of this section, children with a family income as follows:

(a) Equal to or less than one hundred fifty percent of the Office of Management and Budget income poverty guideline with eligible children one year of age or younger;

(b) Equal to or less than one hundred thirty-three percent of the Office of Management and Budget income poverty guideline with eligible children over one year of age and under six years of age; or

(c) Equal to or less than one hundred percent of the Office of Management and Budget income poverty guideline with eligible children six years of age or older and less than nineteen years of age;

(7) Persons who are medically needy caretaker relatives as allowed under 42 U.S.C. 1396d(a)(ii);

(8) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii)(XV) and (XVI), disabled persons who have a family income of less than two hundred fifty percent of the Office of Management and Budget income poverty guideline. Such persons shall be subject to payment of premiums as a percentage of family income beginning at not less than two hundred percent of the Office of Management and Budget income poverty guideline. Such premiums shall be graduated based on family income and shall not exceed seven and one-half percent of family income;

(9) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), persons who:

(a) Have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the federal Public Health Service Act, 42 U.S.C. 300k et seq., in accordance with the requirements of section 1504 of such act, 42 U.S.C. 300n, and who need treatment for breast or cervical cancer, including precancerous and cancerous conditions of the breast or cervix;

(b) Are not otherwise covered under creditable coverage as defined in section 2701(c) of the federal Public Health Service Act, 42 U.S.C. 300gg-3(c);

(c) Have not attained sixty-five years of age; and

(d) Are not eligible for medical assistance under any mandatory categorically needy eligibility group;

(10) Persons eligible for services described in subsection (3) of section 68-972; and

(11) Persons eligible pursuant to section 68-992.

Except as provided in subdivision (8) of this section and section 68-972, eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than two hundred percent of the Office of Management and Budget income poverty guideline and adult eligibility using adult income standards no greater than the applicable categorical eligibility standards established pursuant to state or federal law. Except as otherwise provided in subdivision (8) of this section, the department shall determine eligibility under this section pursuant to such income budgetary methodology and subdivision (1)(q) of section 68-1713.

Source: Laws 1965, c. 397, § 5, p. 1278; Laws 1984, LB 1127, § 4; Laws 1988, LB 229, § 1; Laws 1995, LB 455, § 6; Laws 1996, LB 1044, § 323; Laws 1998, LB 1063, § 6; Laws 1999, LB 594, § 34; Laws 2001, LB 677, § 1; Laws 2002, Second Spec. Sess., LB 8, § 2; Laws 2003, LB 411, § 2; Laws 2005, LB 301, § 3; R.S.Supp.,2005, § 68-1020; Laws 2006, LB 1248, § 15; Laws 2007, LB296, § 249; Laws 2007, LB351, § 3; Laws 2009, LB603, § 2; Laws 2012, LB599, § 3; Initiative Law 2018, No. 427, § 3; Laws 2020, LB323, § 1.

68-919 Medical assistance recipient; liability; when; claim; procedure; department; powers; recovery of medical assistance reimbursement; procedure.

(1) The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

(a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or

(b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for persons with developmental disabilities, or an inpatient hospital.

(2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only after the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria. In recovering such debt, the department shall not foreclose on a lien on the home of the recipient (a) if a sibling of the recipient with an equity interest in the home has lawfully resided in the home for at least one year before the recipient's admission and has lived there continuously since the date of the recipient's admission or (b) while the home is the residence of an adult child who has lived in the recipient's home for at least two years immediately before the recipient was institutionalized, has lived there continuously since that time, and can establish to the satisfaction of the department that he or she provided care that delayed the recipient's admission.

(3) The debt shall include the total amount of medical assistance provided when the recipient was fifty-five years of age or older or during a period of institutionalization as described in subsection (1) of this section and shall not include interest.

(4)(a) It is the intent of the Legislature that the debt specified in subsection (1) of this section be collected by the department before any portion of the estate of a recipient of medical assistance is enjoyed by or transferred to a person not specified in subsection (2) of this section as a result of the death of such recipient. The debt may be recovered from the estate of a recipient of medical assistance. The department shall undertake all reasonable and cost-effective measures to enforce recovery under the Medical Assistance Act. All persons specified in subsections (2) and (4) of this section shall cooperate with the department in the enforcement of recovery under the act.

(b) For purposes of this section:

(i) Estate of a recipient of medical assistance means any real estate, personal property, or other asset in which the recipient had any legal title or interest at or immediately preceding the time of the recipient's death, to the extent of such interests. In furtherance and not in limitation of the foregoing, the estate of a recipient of medical assistance also includes:

(A) Assets to be transferred to a beneficiary described in section 77-2004 or 77-2005 in relation to the recipient through a revocable trust or other similar arrangement which has become irrevocable by reason of the recipient's death; and

(B) Notwithstanding anything to the contrary in subdivision (3) or (4) of section 68-923, assets conveyed or otherwise transferred to a survivor, an heir, an assignee, a beneficiary, or a devisee of the recipient of medical assistance through joint tenancy, tenancy in common, transfer on death deed, survivorship, conveyance of a remainder interest, retention of a life estate or of an estate for a period of time, living trust, or other arrangement by which value or possession is transferred to or realized by the beneficiary of the conveyance or transfer at or as a result of the recipient's death. Such other arrangements include insurance policies or annuities in which the recipient of medical assistance had at the time of death any incidents of ownership of the policy or annuity or the power to designate beneficiaries and any pension rights or completed retirement plans or accounts of the recipient. A completed retirement plan or account is one which because of the death of the recipient of medical assistance ceases to have elements of retirement relating to such recipient and under which one or more beneficiaries exist after such recipient's death; and

(ii) Notwithstanding anything to the contrary in subdivision (4)(b) of this section, estate of a recipient of medical assistance does not include:

(A) Insurance proceeds, any trust account subject to the Burial Pre-Need Sale Act, or any limited lines funeral insurance policy to the extent used to pay for funeral, burial, or cremation expenses of the recipient of medical assistance;

(B) Conveyances of real estate made prior to August 24, 2017, that are subject to the grantor's retention of a life estate or an estate for a period of time;

(C) Life estate interests in real estate after sixty months from the date of recording a deed with retention of a life estate by the recipient of medical assistance; and

(D) Any pension rights or completed retirement plans to the extent that such rights or plans are exempt from claims for reimbursement of medical assistance under federal law.

(c) The department, upon application of the personal representative of an estate, any person or entity otherwise authorized under the Nebraska Probate Code to act on behalf of a decedent, any person or entity having an interest in assets of the decedent which are subject to this subsection, a successor trustee of a revocable trust or other similar arrangement which has become irrevocable by reason of the decedent's death, or any other person or entity holding assets of the decedent described in this subsection, shall timely certify to the applicant, that as of a designated date, whether medical assistance reimbursement is due or an application for medical assistance was pending that may result in medical assistance reimbursement due. An application for a certificate under this subdivision shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivery on its website. Any application that fails to conform with such manner is void. Notwithstanding the lack of an order by a court designating the applicant as a person or entity who may receive information protected by applicable privacy laws, the applicant shall have the authority of a personal representative for the limited purpose of seeking and obtaining from the department this certification. If, in response to a certification request, the department certifies that reimbursement for medical assistance is due, the department may release some or all of the property of a decedent from the provisions of this subsection.

(d) An action for recovery of the debt created under subsection (1) of this section may be brought by the department against the estate of a recipient of medical assistance as defined in subdivision (4)(b) of this section at any time before five years after the last of the following events:

(i) The death of the recipient of medical assistance;

(ii) The death of the recipient's spouse, if applicable;

(iii) The attainment of the age of twenty-one years by the youngest of the recipient's minor children, if applicable; or

(iv) A determination that any adult child of the recipient is no longer blind or totally and permanently disabled as defined by the Supplemental Security Income criteria, if applicable.

(5) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.

(6) The department may waive or compromise its claim, in whole or in part, if the department determines that enforcement of the claim would not be in the best interests of the state or would result in undue hardship as provided in rules and regulations of the department.

(7)(a) Whenever the department has provided medical assistance because of sickness or injury to any person resulting from a third party's wrongful act or negligence and the person has recovered damages from such third party, the department shall have the right to recover the medical assistance it paid from any amounts that the person has received as follows:

(i) In those cases in which the person is fully compensated by the recovery, the department shall be fully reimbursed subject to its contribution to attorney's fees and costs as provided in subdivision (b) of this subsection; or

(ii) In those cases in which the person is not fully compensated by the recovery, the department shall be reimbursed that portion of the recovery that represents the same proportionate reduction of medical expenses paid that the recovery amount bears to full compensation of the person subject to its contributions to attorney's fees and costs as provided in subdivision (b) of this subsection.

(b) When an action or claim is brought by the person and the person incurs or will incur a personal liability to pay attorney's fees and costs of litigation or costs incurred in pursuit of a claim, the department's claim for reimbursement of the medical assistance provided to the person shall be reduced by an amount that represents the department's reasonable pro rata share of attorney's fees and costs of litigation or the costs incurred in pursuit of a claim.

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

(9) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 1994, LB 1224, § 39; Laws 1996, LB 1044, § 334; Laws 2001, LB 257, § 1; Laws 2004, LB 1005, § 7; R.S.Supp.,2004, § 68-1036.02; Laws 2006, LB 1248, § 19; Laws 2007, LB185, § 2; Laws 2013, LB23, § 13; Laws 2015, LB72, § 4; Laws 2017, LB268, § 14; Laws 2019, LB593, § 6; Laws 2021, LB501, § 63.

Cross References

Burial Pre-Need Sale Act, see section 12-1101.
Nebraska Probate Code, see section 30-2201.

68-953 Preferred drug list; department; establish and maintain; pharmaceutical and therapeutics committee; members; expenses.

(1) No later than July 1, 2010, the department shall establish and maintain a preferred drug list for the medical assistance program. The department shall establish a pharmaceutical and therapeutics committee to advise the department on all matters relating to the establishment and maintenance of such list.

(2) The pharmaceutical and therapeutics committee shall include at least fifteen but no more than twenty members. The committee shall consist of at least (a) eight physicians, (b) four pharmacists, (c) a university professor of pharmacy or a person with a doctoral degree in pharmacology, and (d) two public members. No more than twenty-five percent of the committee shall be state employees.

(3) The physician members of the committee, so far as practicable, shall include physicians practicing in the areas of (a) family medicine, (b) internal medicine, (c) pediatrics, (d) cardiology, (e) psychiatry or neurology, (f) obstetrics or gynecology, (g) endocrinology, and (h) oncology.

(4) Members of the committee shall submit conflict of interest disclosure statements to the department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

(5) The committee shall elect a chairperson and a vice-chairperson from among its members. Members of the committee shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(6) The department, in consultation with the committee, shall adopt and publish policies and procedures relating to the preferred drug list, including (a) guidelines for the presentation and review of drugs for inclusion on the preferred drug list, (b) the manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost effectiveness, (c) an appeals process for the resolution of disputes, and (d) such other policies and procedures as the department deems necessary and appropriate.

Source: Laws 2008, LB830, § 5; Laws 2020, LB381, § 54.

68-955 Prescription of drug not on preferred drug list; conditions; antidepressant, antipsychotic, or anticonvulsant prescription drug; prior authorization; not required, when.

(1) Except as otherwise provided in subsection (3) of this section, a health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient if (a) the prescription drug is medically necessary, (b)(i) the provider certifies that the preferred drug has not been therapeutically effective, or with reasonable certainty is not expected to be therapeutically effective, in treating the recipient's condition or (ii) the preferred drug causes or is reasonably expected to cause adverse or harmful reactions in the recipient, and (c) the department authorizes coverage for the prescription drug prior to the dispensing of the drug. The department shall respond to a prior authorization request no later than twenty-four hours after receiving such request.

(2) A health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient without prior authorization by the department or a managed care organization if the provider certifies that (a) the recipient is achieving therapeutic success with a course of antidepressant, antipsychotic, or anticonvulsant medication or medication for human immunodeficiency virus, multiple sclerosis, epilepsy, cancer, or immunosuppressant therapy or (b) the recipient has experienced a prior therapeutic failure with a medication.

(3) Neither the department nor a managed care organization shall require prior authorization for coverage for an antidepressant, antipsychotic, or anticonvulsant prescription drug that is deemed medically necessary by a patient's health care provider for a new or existing medicaid recipient if the medicaid recipient has prior prescription history for the antidepressant, antipsychotic, or anticonvulsant prescription drug within the immediately preceding ninety-day period. A prospective drug utilization review as described in section 38-2869 and applicable federal law for a prescription for an antidepressant, antipsychotic, or anticonvulsant prescription drug for a medicaid recipient with prior prescription history within the immediately preceding ninety-day period shall occur in order to ensure that the prescription for a medicaid recipient is appropriate and is not likely to result in adverse medical results. Use of a pharmaceutical sample is not considered prior prescription history.

Source: Laws 2008, LB830, § 7; Laws 2020, LB1052, § 4.

68-973 Medical assistance programs; improper payments; postpayment reimbursement; legislative findings; integrity procedures and guidelines; legislative intent.

(1) The Legislature finds that the medical assistance program would benefit from increased efforts to (a) prevent improper payments to service providers, including, but not limited to, enforcement of eligibility criteria for recipients of benefits, enforcement of enrollment criteria for providers of benefits, determination of third-party liability for benefits, review of claims for benefits prior to payment, and identification of the extent and cause of improper payment, (b) identify and recoup improper payments, including, but not limited to, identification and investigation of questionable payments for benefits, administrative recoupment of payments for benefits, and referral of cases of fraud to the state medicaid fraud control unit for prosecution, and (c) collect postpayment reimbursement, including, but not limited to, maximizing prescribed drug rebates and maximizing recoveries from estates for paid benefits.

(2) The Legislature further finds that (a) the medical assistance program was established under Title XIX of the federal Social Security Act and is a joint federal-state-funded health insurance program that is the primary source of medical assistance for low-income, disabled, and elderly Nebraskans and (b) the federal government establishes minimum requirements for the medical assistance program and the state designs, implements, administers, and oversees the medical assistance program.

(3) It is the intent of the Legislature to establish and maintain integrity procedures and guidelines for the medical assistance program that meet minimum federal requirements and that coordinate with federal program integrity efforts in order to provide a system that encourages efficient and effective provision of services by Nebraska providers for the medical assistance program.

Source: Laws 2012, LB541, § 2; Laws 2020, LB956, § 4.

68-974 Program integrity contractors; contracts; contents; audit procedures; powers; health insurance premium assistance payment program; contract; department; powers and duties; form of records authorized; appeal; report.

(1) One or more program integrity contractors may be used to promote the integrity of the medical assistance program, to assist with investigations and audits, or to investigate the occurrence of fraud, waste, or abuse. The contract or contracts may include services for (a) cost-avoidance through identification of third-party liability, (b) cost recovery of third-party liability through postpayment reimbursement, (c) casualty recovery of payments by identifying and recovering costs for claims that were the result of an accident or neglect and payable by a casualty insurer, and (d) reviews of claims submitted by providers of services or other individuals furnishing items and services for which payment has been made to determine whether providers have been underpaid or overpaid, and to take actions to recover any overpayments identified or make payment for any underpayment identified.

(2) Notwithstanding any other provision of law, all program integrity contractors when conducting a program integrity audit, investigation, or review shall:

(a) Review claims within four years from the date of the payment;

(b) Send a determination letter concluding an audit within one hundred eighty days after receipt of all requested material from a provider;

(c) In any records request to a provider, furnish information sufficient for the provider to identify the patient, procedure, or location;

(d) Develop and implement with the department a procedure in which an improper payment identified by an audit may be resubmitted as a claims adjustment, including (i) the resubmission of claims denied as a result of an interpretation of scope of services not previously held by the department, (ii) the resubmission of documentation when the document provided is incomplete, illegible, or unclear, and (iii) the resubmission of documentation when clerical errors resulted in a denial of claims for services actually provided. If a service was provided and sufficiently documented but denied because it was determined by the department or the contractor that a different service should have been provided, the department or the contractor shall disallow the difference between the payment for the service that was provided and the payment for the service that should have been provided;

(e) Utilize a licensed health care professional from the specialty area of practice being audited to establish relevant audit methodology consistent with (i) state-issued medicaid provider handbooks and (ii) established clinical practice guidelines and acceptable standards of care established by professional or specialty organizations responsible for setting such standards of care;

(f) Provide a written notification and explanation of an adverse determination that includes the reason for the adverse determination, the medical criteria on which the adverse determination was based, an explanation of the provider's appeal rights, and, if applicable, the appropriate procedure to submit a claims adjustment in accordance with subdivision (2)(d) of this section; and

(g) Schedule any onsite audits with advance notice of not less than ten business days and make a good faith effort to establish a mutually agreed-upon time and date for the onsite audit.

(3) A program integrity contractor retained by the department or the federal Centers for Medicare and Medicaid Services shall work with the department at the start of a recovery audit to review this section and section 68-973 and any other relevant state policies, procedures, regulations, and guidelines regarding program integrity audits. The program integrity contractor shall comply with this section regarding audit procedures. A copy of the statutes, policies, and procedures shall be specifically maintained in the audit records to support the audit findings.

(4) The department shall exclude from the scope of review of recovery audit contractors any claim processed or paid through a capitated medicaid managed care program. The department shall exclude from the scope of review of program integrity contractors any claims that are currently being audited or that have been audited by a program integrity contractor, by the department, or by another entity. Claims processed or paid through a capitated medicaid managed care program shall be coordinated between the department, the contractor, and the managed care organization. All such audits shall be coordinated as to scope, method, and timing. The contractor and the department shall avoid duplication or simultaneous audits. No payment shall be recovered in a medical necessity review in which the provider has obtained prior authorization for the service and the service was performed as authorized.

(5) Extrapolated overpayments are not allowed under the Medical Assistance Act without evidence of a sustained pattern of error, an excessively high error rate, or the agreement of the provider.

(6) The department may contract with one or more persons to support a health insurance premium assistance payment program.

(7) The department may enter into any other contracts deemed to increase the efforts to promote the integrity of the medical assistance program.

(8) Contracts entered into under the authority of this section may be on a contingent fee basis. Contracts entered into on a contingent fee basis shall provide that contingent fee payments are based upon amounts recovered, not amounts identified. Whether the contract is a contingent fee contract or otherwise, the contractor shall not recover overpayments by the department until all appeals have been completed unless there is a credible allegation of fraudulent activity by the provider, the contractor has referred the claims to the department for investigation, and an investigation has commenced. In that event, the contractor may recover overpayment prior to the conclusion of the appeals process. In any contract between the department and a program integrity contractor, the payment or fee provided for identification of overpayments shall be the same provided for identification of underpayments. Contracts shall be in compliance with federal law and regulations when pertinent, including a limit on contingent fees of no more than twelve and one-half percent of amounts recovered, and initial contracts shall be entered into as soon as practicable under such federal law and regulations.

(9) All amounts recovered and savings generated as a result of this section shall be returned to the medical assistance program.

(10) Records requests made by a program integrity contractor in any one-hundred-eighty-day period shall be limited to not more than two hundred records for the specific service being reviewed. The contractor shall allow a provider no less than forty-five days to respond to and comply with a records request. If the contractor can demonstrate a significant provider error rate relative to an audit of records, the contractor may make a request to the department to initiate an additional records request regarding the subject under review for the purpose of further review and validation. The contractor shall not make the request until the time period for the appeals process has expired.

(11) On an annual basis, the department shall require the recovery audit contractor to compile and publish on the department's Internet website metrics related to the performance of each recovery audit contractor. Such metrics shall include: (a) The number and type of issues reviewed; (b) the number of medical records requested; (c) the number of overpayments and the aggregate dollar amounts associated with the overpayments identified by the contractor; (d) the number of underpayments and the aggregate dollar amounts associated with the identified underpayments; (e) the duration of audits from initiation to time of completion; (f) the number of adverse determinations and the overturn rating of those determinations in the appeal process; (g) the number of appeals filed by providers and the disposition status of such appeals; (h) the contractor's compensation structure and dollar amount of compensation; and (i) a copy of the department's contract with the recovery audit contractor.

(12) The program integrity contractor, in conjunction with the department, shall perform educational and training programs for providers that encompass a summary of audit results, a description of common issues, problems, and mistakes identified through audits and reviews, and opportunities for improvement.

(13) Providers shall be allowed to submit records requested as a result of an audit in electronic format, including compact disc, digital versatile disc, or other electronic format deemed appropriate by the department or via facsimile transmission, at the request of the provider.

(14)(a) A provider shall have the right to appeal a determination made by the program integrity contractor.

(b) The contractor shall establish an informal consultation process to be utilized prior to the issuance of a final determination. Within thirty days after receipt of notification of a preliminary finding from the contractor, the provider may request an informal consultation with the contractor to discuss and attempt to resolve the findings or portion of such findings in the preliminary findings letter. The request shall be made to the contractor. The consultation shall occur within thirty days after the provider's request for informal consultation, unless otherwise agreed to by both parties.

(c) Within thirty days after notification of an adverse determination, a provider may request an administrative appeal of the adverse determination as set forth in the Administrative Procedure Act.

(15) The department shall by December 1 of each year report to the Legislature the status of the contracts, including the parties, the programs and issues addressed, the estimated cost recovery, and the savings accrued as a result of the contracts. Such report shall be filed electronically.

(16) For purposes of this section:

(a) Adverse determination means any decision rendered by a program integrity contractor or recovery audit contractor that results in a payment to a provider for a claim for service being reduced or rescinded;

(b) Extrapolated overpayment means an overpayment amount obtained by calculating claims denials and reductions from a medical records review based on a statistical sampling of a claims universe;

(c) Person means bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(d) Program integrity audit means an audit conducted by the federal Centers for Medicare and Medicaid Services, the department, or the federal Centers for Medicare and Medicaid Services with the coordination and cooperation of the department;

(e) Program integrity contractor means private entities with which the department or the federal Centers for Medicare and Medicaid Services contracts to carry out integrity responsibilities under the medical assistance program, including, but not limited to, recovery audits, integrity audits, and unified program integrity audits, in order to identify underpayments and overpayments and recoup overpayments; and

(f) Recovery audit contractor means private entities with which the department contracts to audit claims for medical assistance, identify underpayments and overpayments, and recoup overpayments.

Source: Laws 2012, LB541, § 3; Laws 2015, LB315, § 1; Laws 2019, LB260, § 1; Laws 2020, LB956, § 5.

Cross References

Administrative Procedure Act, see section 84-920.

68-989 Disclosure by applicant; income and assets; action for recovery of medical assistance authorized.

(1) This section shall apply to the fullest extent permitted by federal law and understandings entered into between the state and the federal government. An applicant for medical assistance, or a person acting on behalf of the applicant, shall disclose at the time of application and, to the extent not owned at the time of application, at the time of any subsequent review of the applicant's eligibility for medical assistance all of his or her interests in any assets, including, but not limited to, any security, bank account, intellectual property right, contractual or lease right, real estate, trust, corporation, limited liability company, or other entity, whether such interest is direct or indirect or vested or contingent. The applicant or a person acting on behalf of the applicant shall also disclose any income derived from such interests and the source of the income.

(2) If the applicant or a person acting on behalf of the applicant willfully fails to make the disclosures required in this section, any medical assistance obtained as a result of such failure is deemed unlawfully obtained and the department shall seek recovery of such medical assistance from the applicant or the estate of the recipient of medical assistance as defined in subdivision (4)(b) of section 68-919.

(3)(a) If income is derived from a related party as described in subdivision (3)(c) of this section, the department shall determine whether the income is or, in the case of a written lease, whether the terms of the lease at the time it was entered into were commercially reasonable and consistent with income or lease terms derived in the relevant market area and negotiated at arms length between parties who are not related.

(b) If the department determines that the income or lease fails to meet these requirements, such income or lease shall be considered a transfer of the applicant's assets for less than full consideration and the department shall consider the resulting shortfall, to the fullest extent permitted by federal law, when determining eligibility for medical assistance or any share of cost or as otherwise required by law. The burden of proof of commercial reasonableness rests with the applicant. The department's determination on commercial reasonableness may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(c) A related party is (i) the applicant's spouse or an individual who is related to the applicant as described in section 77-2004 or 77-2005 or (ii) an entity controlled by one or more individuals described in subdivision (1)(c)(i) of this section. For purposes of this subdivision, control means individuals listed in subdivision (1)(c)(i) of this section who together own or have the option to acquire more than fifty percent of the entity.

(4) An action for recovery of medical assistance obtained in violation of this section may be brought by the department against the applicant or against the estate of the recipient of medical assistance as defined in subdivision (4)(b) of section 68-919 at any time before five years after the death of both the applicant and the applicant's spouse, if any.

(5) The department may adopt and promulgate rules and regulations to carry out this section. The rules and regulations may include guidance on the commercial reasonableness of lease terms.

Source: Laws 2017, LB268, § 11; Laws 2019, LB593, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

68-990 Medical assistance; transfers; security for recovery of indebtedness to department; lien; notice; filing; department; duties; section null and void.

(1) For purposes of this section:

(a) Related transferee means:

(i) An individual who is related to the transferor as described in section 77-2004 or 77-2005;

(ii) An entity controlled by one or more individuals described in subdivision (1)(a)(i) of this section. For purposes of this subdivision, control means individuals described in subdivision (1)(a)(i) of this section together own or have the option to acquire more than fifty percent of the entity; or

(iii) An irrevocable trust in which an individual described in subdivision (1)(a)(i) of this section is a beneficiary; and

(b) Related transferee does not include the recipient's spouse, if any, or a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by Supplemental Security Income criteria.

(2) This section shall apply to the fullest extent permitted by federal law and understandings entered into between the state and the federal government. This section provides security for the recovery of the indebtedness to the department for medical assistance as provided in section 68-919. This section applies to transfers of real estate made on or after August 24, 2017. If, during the transferor's lifetime, an interest in real estate is irrevocably transferred to a related transferee for less than full consideration and the real estate transferred to the related transferee is subject to rights, actual or constructive possession, or powers retained by the transferor in a deed or other instrument, the interest in the real estate when acquired by the related transferee is subject to a lien in favor of the State of Nebraska for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to secure payment in full of any claim remaining unpaid after application of the assets of the transferor's probate estate, not to exceed the amount determined under subsection (6) of this section. The lien does not attach to any interest retained by the transferor. Except as provided in this section, the lien applies to medical assistance provided before, at the same time as, or after the filing of the notice of lien under subsection (4) of this section.

(3) Within fifteen days after receipt of a statement required by section 76-214 indicating that the underlying real estate transfer was between relatives or, if to a trustee, where the trustor or settlor and the beneficiary are relatives, the register of deeds shall send a copy of such statement, together with the parcel identification number, if ascertainable, to the department. The copy shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering the copy on its website or otherwise communicate the manner of delivery to the registers of deeds.

(4) The lien imposed by subsection (2) of this section becomes effective upon the filing of a notice of lien in accordance with this subsection. The department may file a notice of the lien imposed by subsection (2) of this section only after the department receives an application for medical assistance on behalf of a transferor. The notice must be filed in the office of the register of deeds of the

county or counties in which the real estate subject to the lien is located. The notice must provide the legal description of the real estate subject to the lien, specify the amount then secured by the lien, and indicate that the lien also covers any future medical assistance provided to the transferor. The department shall provide the register of deeds with a self-addressed return envelope bearing sufficient postage for purposes of returning to the department a file-stamped copy of the notice of lien, which the register of deeds shall mail to the department. The lien is not valid against the owner of an interest in real estate received by a grantee who is not a related transferee pursuant to a deed or other instrument if such deed or other instrument is filed prior to the notice of lien. A lien that is not valid under this subsection shall be released by the department upon notice thereof from such grantee or a subsequent bona fide purchaser. A lien is valid against any subsequent creditor only if notice of such lien has been filed by the department in accordance with this subsection. Any mortgage or trust deed recorded prior to the filing of a notice of lien shall have priority over such lien. Except as provided in subsection (5) of this section, any optional future advance or advance necessary to protect the security secured by the mortgage or trust deed shall have the same priority as the mortgage or trust deed.

(5) Any optional future advance made pursuant to a mortgage or trust deed on real estate recorded prior to the filing of a notice of lien under subsection (4) of this section shall be junior to such lien only if the optional future advance is made after:

(a) A notice of lien has been filed by the department in accordance with subsection (4) of this section; and

(b) Written notice of the filing for record of such notice of lien has been received by the mortgagee or beneficiary at the address of the mortgagee or beneficiary set forth in the mortgage or trust deed or, if the mortgage or trust deed has been assigned, by the assignee at the address of the most recent assignee reflected in a recorded assignment of the mortgage or trust deed. The notice under this subdivision shall be sent by the department by certified mail to the applicable mortgagee, beneficiary, or assignee.

(6)(a) The lien authorized in this section is limited to the lesser of (i) the amount necessary to fully satisfy any reimbursement obligations remaining unpaid after application of any assets from the transferor's probate estate or (ii) the actual value of the real estate at the time that the lien is enforced minus the consideration adjustment and minus the cost of the improvements made to the real estate by or on behalf of the related transferee, if any.

(b) For purposes of this subsection:

(i) Actual value has the same meaning as in section 77-112;

(ii) Consideration adjustment means the amount of consideration paid by the related transferee to the transferor for the real estate multiplied by the growth factor; and

(iii) Growth factor means the actual value of the real estate at the time the lien is enforced divided by the actual value of the real estate at the time the consideration was paid.

(c) The burden of proof for showing the consideration paid for the real estate, the cost of any improvements to the real estate, and the actual value of the real estate rests with the related transferee or his or her successor in interest.

(7) If a deed or other instrument transferring an interest in real estate contains a recital acknowledged by the grantor stating that the grantee is not a related transferee, the real estate being transferred shall not be subject to the lien imposed by this section. A related transferee who takes possession or otherwise enjoys the benefits of the transfer knowing the recital is false becomes personally liable for medical assistance reimbursement to the extent necessary to discharge any claim remaining unpaid after application of the assets of the transferor's probate estate, not to exceed the amount determined under subsection (6) of this section.

(8) The department shall release or subordinate the lien authorized in this section upon application by the related transferee in which the related transferee agrees to indemnify the department for medical assistance reimbursement pursuant to section 68-919 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's probate estate, not to exceed the amount determined under subsection (6) of this section. The department may require the application submitted pursuant to this subsection to be accompanied by good and sufficient sureties or other evidence determined by the department to be sufficient to secure the liability. The department shall also release the lien upon a satisfactory showing of undue hardship or a showing that the interest subject to the lien is not one from which medical assistance reimbursement may be had.

(9)(a) Any indemnity and any lien shall be released upon:

(i) Notice delivered to the department, by certified mail, return receipt requested, of (A) the death and identification, including the social security number, of the transferor, (B) the legal description of the real estate subject to the indemnity or lien, and (C) the names and addresses of the owners of record of the real estate; and

(ii) The department either (A) filing a release of lien with the register of deeds of the county or counties in which the real estate subject to the lien is located or (B) not filing an action to foreclose the lien or collect on the indemnity within one year after delivery of the notice required under subdivision (9)(a)(i) of this section.

(b) Proof of delivery of such notice shall be made by filing a copy of the notice and a copy of the certified mail return receipt with the register of deeds of the county or counties in which the real estate subject to the lien is located.

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

(11) This section is null and void as of August 24, 2017.

Source: Laws 2017, LB268, § 12; Laws 2019, LB593, § 8.

68-992 Eligibility for medical assistance; expanded population; Department of Health and Human Services; duties.

(1) Eligibility for medical assistance shall be expanded to include certain adults ages nineteen through sixty-four whose income is equal to or less than one hundred thirty-eight percent of the federal poverty level, as authorized and using the income methodology defined by 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) and related federal regulations and guidance, as such statute, regulations, and guidance existed on January l, 2018.

(2) On or before April 1, 2019, in order to ensure that eligibility for medical assistance is expanded as required by this section, the Department of Health and Human Services shall submit a state plan amendment and all other necessary documents seeking required approvals or waivers to the federal Centers for Medicare and Medicaid Services.

(3) The Department of Health and Human Services shall take all actions necessary to maximize federal financial participation in funding medical assistance pursuant to this section.

(4) No greater or additional burdens or restrictions on eligibility, enrollment, benefits, or access to health care services shall be imposed on persons eligible for medical assistance pursuant to this section than on any other population eligible for medical assistance.

(5) This section shall apply notwithstanding any other provision of law or federal waiver.

Source: Initiative Law 2018, No. 427, § 2.

68-993 Medical parole; protocol.

The Division of Medicaid and Long-Term Care of the Department of Health and Human Services shall, in consultation with the Department of Correctional Services, develop a protocol to assist an individual who is eligible for medical parole pursuant to section 83-1,110.02 to apply for and receive benefits under the Medical Assistance Act.

Source: Laws 2019, LB726, § 2.

68-994 Long-term care services and supports; department; limitation on addition to medicaid managed care program.

Until July 1, 2023, the department shall not add long-term care services and supports to the medicaid managed care program. For purposes of this section, long-term care services and supports includes services of a skilled nursing facility, a nursing facility, and an assisted-living facility and home and community-based services.

Source: Laws 2019, LB468, § 2; Laws 2021, LB101, § 1.

68-995 Contracts and agreements; department; duties.

All contracts and agreements relating to the medical assistance program governing at-risk managed care service delivery for health services entered into by the department and existing on or after August 11, 2020, shall:

(1) Provide a definition and cap on administrative spending such that (a) administrative expenditures do not include profit greater than the contracted amount, (b) any administrative spending is necessary to improve the health status of the population to be served, and (c) administrative expenditures do not include contractor incentives. Administrative spending shall not under any circumstances exceed twelve percent. Such spending shall be tracked by the contractor and reported quarterly to the department and electronically to the Clerk of the Legislature;

(2) Provide a definition of annual contractor profits and losses and restrict such profits and losses under the contract so that profit shall not exceed a percentage specified by the department but not more than three percent per year as a percentage of the aggregate of all income and revenue earned by the

contractor and related parties, including parent and subsidiary companies and risk-bearing partners, under the contract;

(3) Provide for return of (a) any remittance if the contractor does not meet the minimum medical loss ratio, (b) any unearned incentive funds, and (c) any other funds in excess of the contractor limitations identified in state or federal statute or contract to the State Treasurer for credit to the Medicaid Managed Care Excess Profit Fund;

(4) Provide for a minimum medical loss ratio of eighty-five percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract;

(5) Provide that contractor incentives, in addition to potential profit, be up to two percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract; and

(6) Be reviewed and awarded competitively and in full compliance with the procurement requirements of the State of Nebraska.

Source: Laws 2012, LB1158, § 2; Laws 2016, LB1011, § 1; R.S.1943, (2018), § 71-831; Laws 2020, LB1158, § 2.

68-996 Medicaid Managed Care Excess Profit Fund; created; use; investment.

The Medicaid Managed Care Excess Profit Fund is created. The fund shall contain money returned to the State Treasurer pursuant to subdivision (3) of section 68-995. The fund shall first be used to offset any losses under subdivision (2) of section 68-995 and then to provide for services addressing the health needs of adults and children under the Medical Assistance Act, including filling service gaps, providing system improvements, and sustaining access to care as determined by the Legislature. The fund shall only be used for the purposes described in this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2020, LB1158, § 3.

Cross References

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

68-997 Job-skills programs; voluntary; departments; powers and duties.

(1) Beginning October 1, 2020, the Department of Health and Human Services shall inform each adult applicant for medical assistance about job-skills programs within the Department of Health and Human Services, the Department of Labor, or other skill-based programs that could assist the applicant for medical assistance in obtaining job skills or training, employment, higher-paying jobs, or related skills. The Department of Health and Human Services shall connect interested applicants to such job-skills programs. The job-skills programs may be utilized on a voluntary basis by applicants for medical assistance or recipients of medical assistance. The job-skills programs do not affect the receipt of services provided under the Medical Assistance Act.

(2) Beginning February 1, 2021, and within thirty days of the expiration of each subsequent calendar quarter within the years 2021 and 2022, the Department of Health and Human Services shall report electronically to the Clerk of

the Legislature on the total number of applicants for medical assistance who were referred to job-skills programs under this section and any job-skills services received as a result of this section by applicants for medical assistance.

(3) Beginning January 1, 2021, through December 31, 2022, the Department of Labor shall report quarterly to the Department of Health and Human Services the number of applicants for medical assistance who were referred to job-skills programs under this section, the number of applicants for medical assistance who received help obtaining job skills or training, employment, higher-paying jobs, or related skills under this section, and the types of job-skills services received as a result of this section.

(4) The Department of Health and Human Services and the Department of Labor shall administer this section.

Source: Laws 2020, LB1158, § 4.

68-998 Managed care organization; provider contract; material change; notice.

(1) For purposes of this section:

(a)(i) Material change means a change to a provider contract, the occurrence and timing of which is not otherwise clearly identified in the provider contract, that decreases the provider's payment or compensation for services to be provided or changes the administrative procedures in a way that may reasonably be expected to significantly increase the provider's administrative expense, including altering an existing prior authorization, precertification, or notification.

(ii) Material change does not include a change implemented as a result of a requirement of state law, rules and regulations adopted and promulgated or policies established by the Department of Health and Human Services, or policies or regulations of the federal Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; and

(b) Provider means a provider that has entered into a provider contract with a managed care organization to provide health care services under the medical assistance program.

(2) Each managed care organization shall establish procedures for changing an existing provider contract with a provider that include the requirements of this section.

(3) If a managed care organization makes any material change to a provider contract, the managed care organization shall provide the provider with at least sixty days' notice of the material change. The notice of a material change required under this section shall include:

(a) The effective date of the material change;

(b) A description of the material change;

(c) The name, business address, telephone number, and electronic mail address of a representative of the managed care organization to discuss the material change, if requested by the provider;

(d) Notice of the opportunity for a meeting using real-time communication to discuss the proposed changes if requested by the provider, including any mode of telecommunications in which all users can exchange information instantly such as the use of traditional telephone, mobile telephone, teleconferencing,

and videoconferencing. If requested by the provider, the opportunity to communicate to discuss the proposed changes may occur via electronic mail instead of real-time communication; and

(e) Notice that upon three material changes in a twelve-month period, the provider may request a copy of the provider contract with material changes consolidated into a single document. The provision of the copy of the provider contract with the material changes incorporated by the managed care organization (i) shall be for informational purposes only, (ii) shall have no effect on the terms and conditions of the provider contract, and (iii) shall not be construed as the creation of a new contract.

(4) Any notice required to be delivered pursuant to this section shall be sent to the provider's point of contact as set forth in the provider contract and shall be clearly and conspicuously marked ''contract change''. If no point of contact is set forth in the provider contract, the insurer shall send the requisite notice to the provider's place of business addressed to the provider.

Source: Laws 2020, LB956, § 2.

68-999 Direct care staff; psychiatric facilities caring for juveniles; standards.

The Division of Medicaid and Long-Term Care of the Department of Health and Human Services shall set standards required for direct care staff of inpatient psychiatric units for juveniles and psychiatric residential treatment facilities for juveniles. The standards shall require that each such staff member:

(1) Be twenty years of age or older;

(2) Be at least two years older than the oldest resident in the unit or facility;

(3) Have a high school diploma or its equivalent; and

(4) Have appropriate training for basic interaction care such as supervision, daily living care, and mentoring of residents in the unit or facility.

Source: Laws 2020, LB1002, § 44.

68-9,100 Hospital and nursing facility services; reimbursement; rate methodology; rules and regulations.

The department shall adopt and promulgate rules and regulations regarding the rate methodology for reimbursement of hospital and nursing facility services. Any change to the rate methodology is considered substantive and requires a new rulemaking or regulationmaking proceeding under the Administrative Procedure Act.

Source: Laws 2020, LB1053, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

68-9,101 Multiple procedure payment reduction policy; implementation; when prohibited.

(1) For purposes of this section, multiple procedure payment reduction policy means a policy used in the federal medicare program under Title XVIII of the federal Social Security Act for outpatient rehabilitation service codes where full payment is made for the unit or procedure with the highest rate and subsequent units and procedures are paid at a reduction of the published rates when more than one unit procedure is provided to the same patient on the same day.

(2) A multiple procedure payment reduction policy shall not be implemented under the Medical Assistance Act as it applies to therapy services provided by physical therapy, occupational therapy, or speech-language pathology.

Source: Laws 2021, LB100, § 2.

ARTICLE 10

ASSISTANCE, GENERALLY

(b) PROCEDURE AND PENALTIES

(b) PROCEDURE AND PENALTIES

68-1017.02 Supplemental Nutrition Assistance Program; department; duties; state outreach plan; report; contents; categorical eligibility; legislative intent; increased benefits, when; person ineligible, when.

(1)(a) The Department of Health and Human Services shall apply for and utilize to the maximum extent possible, within limits established by the Legislature, any and all appropriate options available to the state under the federal Supplemental Nutrition Assistance Program and regulations adopted under such program to maximize the number of Nebraska residents being served under such program within such limits. The department shall seek to maximize federal funding for such program and minimize the utilization of General Funds for such program and shall employ the personnel necessary to determine the options available to the state and issue the report to the Legislature required by subdivision (b) of this subsection.

(b) The department shall submit electronically an annual report to the Health and Human Services Committee of the Legislature by December 1 on efforts by the department to carry out the provisions of this subsection. Such report shall provide the committee with all necessary and appropriate information to enable the committee to conduct a meaningful evaluation of such efforts. Such information shall include, but not be limited to, a clear description of various options available to the state under the federal Supplemental Nutrition Assistance Program, the department's evaluation of and any action taken by the department with respect to such options, the number of persons being served under such program, and any and all costs and expenditures associated with such program.

(c) The Health and Human Services Committee of the Legislature, after receipt and evaluation of the report required in subdivision (b) of this subsection, shall issue recommendations to the department on any further action necessary by the department to meet the requirements of this section.

(2)(a) The department shall develop a state outreach plan to promote access by eligible persons to benefits of the Supplemental Nutrition Assistance Program. The plan shall meet the criteria established by the Food and Nutrition Service of the United States Department of Agriculture for approval of state outreach plans. The Department of Health and Human Services may apply for and accept gifts, grants, and donations to develop and implement the state outreach plan.

(b) For purposes of developing and implementing the state outreach plan, the department shall partner with one or more counties or nonprofit organizations. If the department enters into a contract with a nonprofit organization relating to the state outreach plan, the contract may specify that the nonprofit organization is responsible for seeking sufficient gifts, grants, or donations necessary for the development and implementation of the state outreach plan and may additionally specify that any costs to the department associated with the award and management of the contract or the implementation or administration of the state outreach plan shall be paid out of private or federal funds received for development and implementation of the state outreach plan.

(c) The department shall submit the state outreach plan to the Food and Nutrition Service of the United States Department of Agriculture for approval on or before August 1, 2011, and shall request any federal matching funds that may be available upon approval of the state outreach plan. It is the intent of the Legislature that the State of Nebraska and the Department of Health and Human Services use any additional public or private funds to offset costs associated with increased caseload resulting from the implementation of the state outreach plan.

(d) The department shall be exempt from implementing or administering a state outreach plan under this subsection, but not from developing such a plan, if it does not receive private or federal funds sufficient to cover the department's costs associated with the implementation and administration of the plan, including any costs associated with increased caseload resulting from the implementation of the plan.

(3)(a) It is the intent of the Legislature that:

(i) Hard work be rewarded and no disincentives to work exist for Supplemental Nutrition Assistance Program participants;

(ii) Supplemental Nutrition Assistance Program participants be enabled to advance in employment, through greater earnings or new, better-paying employment;

(iii) Participants in employment and training pilot programs be able to maintain Supplemental Nutrition Assistance Program benefits while seeking employment with higher wages that allow them to reduce or terminate such program benefits; and

(iv) Nebraska better utilize options under the Supplemental Nutrition Assistance Program that other states have implemented to encourage work and employment.

(b)(i) The department shall create a TANF-funded program or policy that, in compliance with federal law, establishes categorical eligibility for federal food assistance benefits pursuant to the Supplemental Nutrition Assistance Program to maximize the number of Nebraska residents being served under such program in a manner that does not increase the current gross income eligibility limit except as otherwise provided in subdivision (3)(b)(ii) of this section.

(ii) Except as otherwise provided in this subdivision, such TANF-funded program or policy shall increase the gross income eligibility limit to one hundred sixty-five percent of the federal Office of Management and Budget income poverty guidelines as allowed under federal law and under 7 C.F.R. 273.2(j)(2), as such law and regulation existed on April 1, 2021, but shall not increase the net income eligibility limit. It is the intent of the Legislature to

fund the administrative costs associated with the benefits under this subdivision beginning on May 27, 2021, with federal funds as allowed under the federal American Rescue Plan Act of 2021, Public Law 117-2, as such act existed on April 1, 2021, and continue to fund such administrative costs with such federal funds through September 30, 2023. Such administrative costs shall not be paid for with General Funds. Beginning October 1, 2023, the gross income eligibility limit shall return to the amount used prior to the increase required by this subdivision. The department shall evaluate the TANF-funded program or policy created pursuant to this subsection and provide a report electronically to the Health and Human Services Committee of the Legislature and the Legislative Fiscal Analyst on or before December 31, 2022, regarding the gross income eligibility limit and whether it maximizes the number of Nebraska residents being served under the program or policy. The evaluation shall include an identification and determination of additional administrative costs resulting from the increase to the gross income eligibility limit, a recommendation regarding the gross income eligibility limit, and a determination of the availability of federal funds for the program or policy.

(iii) To the extent federal funds are available to the Department of Labor for the SNAP Next Step Program, until September 30, 2023, any recipient of Supplemental Nutrition Assistance Program benefits whose household income is between one hundred thirty-one and one hundred sixty-five percent of the federal Office of Management and Budget income poverty guidelines and who is not exempt from work participation requirements shall be encouraged to participate in the SNAP Next Step Program administered by the Department of Labor if the recipient is eligible to participate in the program and the program's services are available in the county in which such household is located. It is the intent of the Legislature that no General Funds be utilized by the Department of Labor for the processes outlined in this subdivision (iii). For purposes of this section, SNAP Next Step Program means a partnership program between the Department of Health and Human Services and the Department of Labor to assist under-employed and unemployed recipients of Supplemental Nutrition Assistance Program benefits in finding self-sufficient employment.

(iv) Such TANF-funded program or policy shall eliminate all asset limits for eligibility for federal food assistance benefits, except that the total of liquid assets which includes cash on hand and funds in personal checking and savings accounts, money market accounts, and share accounts shall not exceed twenty-five thousand dollars pursuant to the Supplemental Nutrition Assistance Program, as allowed under federal law and under 7 C.F.R. 273.2(j)(2).

(v) This subsection becomes effective only if the department receives funds pursuant to federal participation that may be used to implement this subsection.

(c) For purposes of this subsection:

(i) Federal law means the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., and regulations adopted under the act; and

(ii) TANF means the federal Temporary Assistance for Needy Families program established in 42 U.S.C. 601 et seq.

(4)(a) Within the limits specified in this subsection, the State of Nebraska opts out of the provision of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as such act existed on January 1, 2009, that

eliminates eligibility for the Supplemental Nutrition Assistance Program for any person convicted of a felony involving the possession, use, or distribution of a controlled substance.

(b) A person shall be ineligible for Supplemental Nutrition Assistance Program benefits under this subsection if he or she (i) has had three or more felony convictions for the possession or use of a controlled substance or (ii) has been convicted of a felony involving the sale or distribution of a controlled substance or the intent to sell or distribute a controlled substance. A person with one or two felony convictions for the possession or use of a controlled substance shall only be eligible to receive Supplemental Nutrition Assistance Program benefits under this subsection if he or she is participating in or has completed a state-licensed or nationally accredited substance abuse treatment program since the date of conviction. The determination of such participation or completion shall be made by the treatment provider administering the program.

Source: Laws 2003, LB 667, § 22; Laws 2005, LB 301, § 2; Laws 2008, LB171, § 1; Laws 2009, LB288, § 28; Laws 2011, LB543, § 1; Laws 2012, LB782, § 95; Laws 2021, LB108, § 1.

ARTICLE 11

AGING

(a) ADVISORY COMMITTEE ON AGING

(c) AGING AND DISABILITY RESOURCE CENTER ACT

(a) ADVISORY COMMITTEE ON AGING

68-1105 Committee; special committees; members; expenses.

The members of the Division of Medicaid and Long-Term Care Advisory Committee on Aging, and noncommittee members serving on special committees, shall receive no compensation for their services other than reimbursement for expenses as provided in sections 81-1174 to 81-1177. Committee expenses and any office expenses shall be paid from funds made available to the committee by the Legislature.

Source: Laws 1965, c. 409, § 5, p. 1314; Laws 1971, LB 97, § 4; Laws 1974, LB 660, § 4; Laws 1981, LB 204, § 104; Laws 1982, LB 404, § 33; Laws 1996, LB 1044, § 344; Laws 2007, LB296, § 276; Laws 2020, LB381, § 55.

(c) AGING AND DISABILITY RESOURCE CENTER ACT

68-1114 Terms, defined.

For purposes of the Aging and Disability Resource Center Act:

(1) Aging and disability resource center means a community-based entity established to provide information about long-term care services and support and to facilitate access to options counseling to assist eligible individuals and

their representatives in identifying the most appropriate services to meet their long-term care needs;

(2) Area agency on aging has the meaning found in section 81-2208;

(3) Center for independent living has the definition found in 29 U.S.C. 796a, as such section existed on January 1, 2018;

(4) Department means the State Unit on Aging of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or any successor agency designated by the state to fulfill the responsibilities of section 305(a)(1) of the federal Older Americans Act of 1965, 42 U.S.C. 3025(a)(1), as such section existed on January 1, 2018;

(5) Eligible individual means a person who has lost, never acquired, or has one or more conditions that affect his or her ability to perform basic activities of daily living that are necessary to live independently;

(6) Options counseling means a service that assists an eligible individual in need of long-term care and his or her representatives to make informed choices about the services and settings which best meet his or her long-term care needs and that uses uniform data and information collection and encourages the widest possible use of community-based options to allow an eligible individual to live as independently as possible in the setting of his or her choice;

(7) Partnering organization means an organization specializing in serving aging persons or persons with disabilities that has agreed to provide the services described in the Aging and Disability Resource Center Act;

(8) Representative means a person designated as a legal guardian, designated by a power of attorney or a health care power of attorney, or chosen by law, by a court, or by an eligible individual seeking services, but use of the term representative shall not be construed to disqualify an individual who retains all legal and personal autonomy;

(9) Uniform assessment means a single standardized tool used to assess a defined population at a specific time; and

(10) University Center for Excellence in Developmental Disability Education, Research and Service means the federally designated University Center for Excellence in Developmental Disability Education, Research and Service of the Munroe-Meyer Institute at the University of Nebraska Medical Center.

Source: Laws 2015, LB320, § 4; Laws 2018, LB793, § 3; Laws 2022, LB856, § 1.
Effective date July 21, 2022.

68-1117 Area agency on aging or partnering organization; powers and duties.

(1) An area agency on aging or partnering organization receiving funding pursuant to section 68-1115, may work in partnership with one or more partnering organizations that specialize in serving persons with congenital and acquired disabilities to provide services as described in subsection (2) of section 68-1116, including, but not limited to, centers for independent living and the University Center for Excellence in Developmental Disability Education, Research and Service, for the purpose of developing an aging and disability resource center plan. After consultation with a collaboration of organizations providing advocacy, protection, and safety for aging persons and persons with congenital and acquired disabilities, the partnership may submit to the depart-

ment an aging and disability resource center plan. The plan shall specify how organizations currently serving eligible individuals will be engaged in the process of delivery of services through the aging and disability resource center. The plan shall indicate how resources will be utilized by the collaborating organizations to fulfill the responsibilities of an aging and disability resource center.

(2) Two or more area agencies on aging or partnering organizations may develop a joint aging and disability resource center plan to serve all or a portion of their planning-and-service areas. A joint plan shall provide information on how the services described in section 68-1116 will be provided in the counties to be served by the aging and disability resource center.

(3) A partnering organization may: (a) Contract with an area agency on aging for the purpose of providing services pursuant to this section; or (b) contract with the department for the purpose of providing services pursuant to this section.

Source: Laws 2015, LB320, § 7; Laws 2018, LB793, § 6; Laws 2022, LB856, § 2.
Effective date July 21, 2022.

68-1119 Reimbursement; schedule.

The department shall reimburse each area agency on aging operating an aging and disability resource center on a schedule agreed to by the department and the area agency on aging. If a partnering organization has contracted with the department for the purpose of providing services described in the Aging and Disability Resource Center Act, the department shall reimburse the partnering organization on a schedule agreed to by the department and the partnering organization. Such reimbursement shall be made from (1) state funds appropriated by the Legislature, (2) federal funds allocated to the department for the purpose of establishing and operating aging and disability resource centers, and (3) other funds as available.

Source: Laws 2015, LB320, § 9; Laws 2018, LB793, § 8; Laws 2022, LB856, § 3.
Effective date July 21, 2022.

ARTICLE 12

SOCIAL SERVICES

Section

68-1201 Eligibility determination; exclusion of certain assets and income.

In determining eligibility for the program for aid to dependent children pursuant to section 43-512 as administered by the State of Nebraska pursuant to the federal Temporary Assistance for Needy Families program, 42 U.S.C. 601 et seq., for the low-income home energy assistance program administered by the State of Nebraska pursuant to the federal Energy Policy Act of 2005, 42 U.S.C. 8621 to 8630, for the Supplemental Nutrition Assistance Program administered by the State of Nebraska pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., and for the child care subsidy program established pursuant to section 68-1202, the following shall not be included in determining assets or income:

(1) Assets in or income from an educational savings account, a Coverdell educational savings account described in 26 U.S.C. 530, a qualified tuition program established pursuant to 26 U.S.C. 529, or any similar savings account or plan established to save for qualified higher education expenses as defined in section 85-1802;

(2) Income from scholarships or grants related to postsecondary education, whether merit-based, need-based, or a combination thereof;

(3) Income from postsecondary educational work-study programs, whether federally funded, funded by a postsecondary educational institution, or funded from any other source;

(4) Assets in or income from an account under a qualified program as provided in section 77-1402;

(5) Income received for participation in grant-funded research on the impact that income has on the development of children in low-income families, except that such exclusion of income must not exceed four thousand dollars per year for a maximum of eight years and such exclusion shall only be made if the exclusion is permissible under federal law for each program referenced in this section. No such exclusion shall be made for such income on or after December 31, 2026; and

(6) Income from any tax credits received pursuant to the School Readiness Tax Credit Act.

Source: Laws 2014, LB359, § 1; Laws 2015, LB591, § 10; Laws 2016, LB889, § 8; Laws 2016, LB1081, § 2; Laws 2021, LB533, § 1.

Cross References

School Readiness Tax Credit Act, see section 77-3601.

68-1206 Social services; administration; contracts; payments; duties; federal Child Care Subsidy program; participation; requirements; funding; evaluation.

(1) The Department of Health and Human Services shall administer the program of social services in this state. The department may contract with other social agencies for the purchase of social services at rates not to exceed those prevailing in the state or the cost at which the department could provide those services. The statutory maximum payments for the separate program of aid to dependent children shall apply only to public assistance grants and shall not apply to payments for social services.

(2)(a) As part of the provision of social services authorized by section 68-1202, the department shall participate in the federal child care assistance program under 42 U.S.C. 9857 et seq., as such sections existed on January 1, 2021, and provide child care assistance to families with incomes up to (i) one hundred eighty-five percent of the federal poverty level prior to October 1, 2023, or (ii) one hundred thirty percent of the federal poverty level on and after October 1, 2023.

(b) As part of the provision of social services authorized by this section and section 68-1202, the department shall participate in the federal Child Care Subsidy program. A child care provider seeking to participate in the federal Child Care Subsidy program shall comply with the criminal history record information check requirements of the Child Care Licensing Act. In determining ongoing eligibility for this program, ten percent of a household's gross earned income shall be disregarded after twelve continuous months on the program and at each subsequent redetermination. In determining ongoing eligibility, if a family's income exceeds one hundred eighty-five percent of the federal poverty level prior to October 1, 2023, or one hundred thirty percent of the federal poverty level on and after October 1, 2023, the family shall receive transitional child care assistance through the remainder of the family's eligibility period or until the family's income exceeds eighty-five percent of the state median income for a family of the same size as reported by the United States Bureau of the Census, whichever occurs first. When the family's eligibility period ends, the family shall continue to be eligible for transitional child care assistance if the family's income is below two hundred percent of the federal poverty level prior to October 1, 2023, or one hundred eighty-five percent of the federal poverty level on and after October 1, 2023. The family shall receive transitional child care assistance through the remainder of the transitional eligibility period or until the family's income exceeds eighty-five percent of the state median income for a family of the same size as reported by the United States Bureau of the Census, whichever occurs first. The amount of such child care assistance shall be based on a cost-shared plan between the recipient family and the state and shall be based on a sliding-scale methodology. A recipient family may be required to contribute a percentage of such family's gross income for child care that is no more than the cost-sharing rates in the transitional child care assistance program as of January 1, 2015, for those no longer eligible for cash assistance as provided in section 68-1724.

(c) For the period beginning July 1, 2021, through September 30, 2023, funds provided to the State of Nebraska pursuant to the Child Care and Development Block Grant Act of 1990, 42 U.S.C. 9857 et seq., as such act and sections existed on March 24, 2021, shall be used to pay the costs to the state resulting from the income eligibility changes made in subdivisions (2)(a) and (b) of this section by Laws 2021, LB485. If the available amount of such funds is insufficient to pay such costs, then funds provided to the state for the Temporary Assistance for Needy Families program established in 42 U.S.C. 601 et seq. may also be used. No General Funds shall be used to pay the costs to the state resulting from the income eligibility changes made in subdivisions (2)(a) and (b) of this section by Laws 2021, LB485, for the period beginning July 1, 2021, through September 30, 2023.

(d) The Department of Health and Human Services shall collaborate with a private nonprofit organization with expertise in early childhood care and education for an independent evaluation of the income eligibility changes made

in subdivisions (2)(a) and (b) of this section by Laws 2021, LB485, if private funding is made available for such purpose. The evaluation shall be completed by December 15, 2023, and shall be submitted electronically to the department and to the Health and Human Services Committee of the Legislature.

(3) In determining the rate or rates to be paid by the department for child care as defined in section 43-2605, the department shall adopt a fixed-rate schedule for the state or a fixed-rate schedule for an area of the state applicable to each child care program category of provider as defined in section 71-1910 which may claim reimbursement for services provided by the federal Child Care Subsidy program, except that the department shall not pay a rate higher than that charged by an individual provider to that provider's private clients. The schedule may provide separate rates for care for infants, for children with special needs, including disabilities or technological dependence, or for other individual categories of children. The schedule may also provide tiered rates based upon a quality scale rating of step three or higher under the Step Up to Quality Child Care Act. The schedule shall be effective on October 1 of every year and shall be revised annually by the department.

Source: Laws 1973, LB 511, § 6; Laws 1982, LB 522, § 44; Laws 1991, LB 836, § 26; Laws 1995, LB 401, § 22; Laws 1996, LB 1044, § 347; Laws 2006, LB 994, § 68; Laws 2007, LB296, § 279; Laws 2013, LB507, § 15; Laws 2014, LB359, § 3; Laws 2015, LB81, § 1; Laws 2019, LB460, § 1; Laws 2020, LB1185, § 1; Laws 2021, LB485, § 1.

Cross References

Child Care Licensing Act, see section 71-1908.
Step Up to Quality Child Care Act, see section 71-1952.

68-1207 Department of Health and Human Services; public child welfare services; supervise; department; caseload requirements; case plan developed.

(1) The Department of Health and Human Services shall supervise all public child welfare services as described by law. The department shall maintain caseloads to carry out child welfare services which provide for adequate, timely, and indepth investigations and services to children and families. Caseloads shall range between twelve and seventeen cases as determined pursuant to subsection (2) of this section. In establishing the specific caseloads within such range, the department shall (a) include the workload factors that may differ due to geographic responsibilities, office location, and the travel required to provide a timely response in the investigation of abuse and neglect, the protection of children, and the provision of services to children and families in a uniform and consistent statewide manner and (b) utilize the workload criteria of the standards established as of January 1, 2012, by the Child Welfare League of America. The average caseload shall be reduced by the department in all service areas as designated pursuant to section 81-3116 to comply with the caseload range described in this subsection by September 1, 2012. Beginning September 15, 2012, the department shall include in its annual report required pursuant to section 68-1207.01 a report on the attainment of the decrease according to such caseload standards. The department's annual report shall also include changes in the standards of the Child Welfare League of America or its successor.

(2) Caseload size shall be determined in the following manner: (a) If children are placed in the home, the family shall count as one case regardless of how many children are placed in the home; (b) if a child is placed out of the home, the child shall count as one case; (c) if, within one family, one or more children are placed in the home and one or more children are placed out of the home, the children placed in the home shall count as one case and each child placed out of the home shall count as one case; and (d) any child receiving services from the department or a private entity under contract with the department shall be counted as provided in subdivisions (a) through (c) of this subsection whether or not such child is a ward of the state. For purposes of this subsection, a child is considered to be placed in the home if the child is placed with his or her biological or adoptive parent or a legal guardian and a child is considered to be placed out of the home if the child is placed in a foster family home as defined in section 71-1901, a residential child-caring agency as defined in section 71-1926, or any other setting which is not the child's planned permanent home.

(3) To insure appropriate oversight of noncourt and voluntary cases when any child welfare services are provided by the department as a result of a child safety assessment, the department shall develop a case plan that specifies the services to be provided and the actions to be taken by the department and the family in each such case. Such case plan shall clearly indicate, when appropriate, that children are receiving services to prevent out-of-home placement and that, absent preventive services, foster care is the planned arrangement for the child.

(4) To carry out the provisions of this section, the Legislature shall provide funds for additional staff.

Source: Laws 1973, LB 511, § 7; Laws 1985, LB 1, § 2; Laws 1990, LB 720, § 1; Laws 1996, LB 1044, § 348; Laws 2005, LB 264, § 2; Laws 2007, LB296, § 280; Laws 2012, LB961, § 3; Laws 2013, LB265, § 38; Laws 2013, LB269, § 8; Laws 2022, LB1173, § 16. Operative date July 21, 2022.

68-1210 Department of Health and Human Services; certain foster care children; payment rates; family care services; plan; implementation.

(1) Notwithstanding any other provision of law, the Department of Health and Human Services shall have the authority through rule or regulation to establish payment rates for children with special needs who are in foster care and in the custody of the department.

(2)(a) On or before October 1, 2022, the Division of Medicaid and Long-Term Care and the Division of Children and Family Services of the Department of Health and Human Services shall develop a plan to implement treatment family care services. The plan shall be submitted to the Health and Human Services Committee of the Legislature and the Nebraska Children's Commission.

(b) On or before October 1, 2023, the Division of Medicaid and Long-Term Care shall implement treatment family care services as allowed by federal law. The department shall seek to maximize federal funding for such program prior to utilizing state medicaid funds for eligible children.

Source: Laws 1990, LB 1022, § 1; Laws 1996, LB 1044, § 350; Laws 2007, LB296, § 282; Laws 2022, LB1173, § 17. Operative date April 20, 2022.

68-1212 Department of Health and Human Services; cases; case manager; employee of department; duties.

For all cases in which a court has awarded a juvenile to the care of the Department of Health and Human Services according to subsection (1) of section 43-285 and for any noncourt and voluntary cases, the case manager shall be an employee of the department. Such case manager shall be responsible for and shall directly oversee: Case planning; service authorization; investigation of compliance; monitoring and evaluation of the care and services provided to children and families; and decisionmaking regarding the determination of visitation and the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile under subsection (1) of section 43-285. Such case manager shall be responsible for decisionmaking and direct preparation regarding the proposed plan for the care, placement, services, and permanency of the juvenile filed with the court required under subsection (2) of section 43-285. The health and safety of the juvenile shall be the paramount concern in the proposed plan.

Source: Laws 2012, LB961, § 2; Laws 2014, LB660, § 1; Laws 2019, LB600, § 18; Laws 2020, LB219, § 3; Laws 2022, LB1173, § 18. Operative date July 21, 2022.

68-1213 Repealed. Laws 2022, LB1173, § 23.
Operative date July 21, 2022.

68-1214 Case managers; training program; department; duties; training curriculum; contents.

To facilitate consistency in training all case managers and allow for Title IV-E reimbursement for case manager training under Title IV-E of the federal Social Security Act, as amended, the same program for initial training of case managers shall be utilized for all case managers. The initial training of all case managers shall be provided by the department or one or more organizations under contract with the department. The department shall create a formal system for measuring and evaluating the quality of such training. All case managers shall complete a formal assessment process after initial training to demonstrate competency prior to assuming responsibilities as a case manager. The training curriculum for case managers shall include, but not be limited to: (1) An understanding of the benefits of utilizing evidence-based and promising casework practices; (2) the importance of guaranteeing service providers' fidelity to evidence-based and promising casework practices; and (3) a commitment to evidence-based and promising family-centered casework practices that utilize a least restrictive approach for children and families.

Source: Laws 2014, LB853, § 45; Laws 2022, LB1173, § 19. Operative date July 21, 2022.

68-1215 Low-income home energy assistance program; eligibility; determination.

For purposes of determining eligibility of a household for the low-income home energy assistance program pursuant to section 68-1201 as administered by the State of Nebraska pursuant to the federal Energy Policy Act of 2005, 42 U.S.C. 8621 to 8630, the Department of Health and Human Services shall apply a household total annual income level of one hundred fifty percent of the

federal poverty level published annually by the United States Department of Health and Human Services or such successor agency which publishes the federal poverty level.

Source: Laws 2021, LB306, § 1.

68-1216 Low-income home energy assistance program; allocation of funds.

The Department of Health and Human Services shall annually allocate at least ten percent of available funds for the low-income home energy assistance program established pursuant to the federal Energy Policy Act of 2005, 42 U.S.C. 8621 to 8630, to weatherization assistance for eligible households as administered by the department or other agencies of the state.

Source: Laws 2021, LB306, § 2.

ARTICLE 15

DISABLED PERSONS AND FAMILY SUPPORT

(c) FAMILY SUPPORT PROGRAM

Section
68-1529. Legislative findings and declarations.
68-1530. Family support program; Department of Health and Human Services; Advisory Committee on Developmental Disabilities; duties; funding; legislative intent; family support program; services and support; rules and regulations; report.
68-1531. Services and support; eligibility.
68-1532. Family support program; services and support; priorities.
68-1533. Family support program; implementation; conditions.
68-1534. Family support program; evaluation.

(c) FAMILY SUPPORT PROGRAM

68-1529 Legislative findings and declarations.

The Legislature finds and declares that:

(1) The family is vital to the fundamental development of each person in the State of Nebraska;

(2) A growing number of families are searching for ways to provide supports for disabled family members in the home rather than placing them in state or private institutional or residential facilities;

(3) The informal support of family caregivers is the backbone of the system of long-term care services, and the assistance provided to a person with a disability is critical to the financial well-being of the state, particularly when such assistance helps to defer a more costly institutional or residential placement;

(4) Necessary services should be available to families caring for a disabled family member so that disabled persons may remain in the home;

(5) The State of Nebraska should make every effort to preserve each family unit having a child with a disability, to ensure that decisions regarding a child with a disability are based on the best interests of the child and the family, and to ensure that services are provided that promote independent living, family-centered care, and individual choices;

(6) The State of Nebraska should promote cost-effective health care alternatives for disabled persons and should maximize state, federal, and private

funding to ensure adequate health care supports and services are available for children with disabilities and their families;

(7) Early intervention (a) has been shown to help a child with a developmental delay, or at risk of a developmental delay, to acquire skills during the most critical period of growth, (b) is a recognized public health approach that helps to ensure that a child has access to services and supports to help the child acquire living skills and increase the likelihood that the child will be self-sufficient or have less dependency on state services, and (c) is a less costly approach for the use of limited state and federal resources;

(8) A child with a disability often needs support after school and during the evening, weekend, and summertime or other school breaks in order to maximize the opportunities for socialization and community integration and to allow family caregivers the ability to work, focus on self-care, socialize, and participate in community integration;

(9) A family support waiver as proposed under section 68-1530 will supplement the continuum of developmental disability services and other state programming for children with disabilities, remediate current program gaps, and offer a pathway for children with disabilities to gain access to the medical assistance program and capped long-term services and supports; and

(10) Providing support to family caregivers allows them to remain in the workforce which in turn allows the state to benefit from the family caregivers' private health insurance as a first payer.

Source: Laws 2022, LB376, § 1.
Effective date July 21, 2022.

68-1530 Family support program; Department of Health and Human Services; Advisory Committee on Developmental Disabilities; duties; funding; legislative intent; family support program; services and support; rules and regulations; report.

(1) The Department of Health and Human Services shall apply for a three-year medicaid waiver under section 1915(c) of the federal Social Security Act to administer a family support program which is a home and community-based services program as provided in this section.

(2)(a) The Advisory Committee on Developmental Disabilities created in section 83-1212.01 shall assist in the development and guide the implementation of the family support program. The family support program shall be administered by the Division of Developmental Disabilities of the Department of Health and Human Services.

(b) It is the intent of the Legislature that any funds distributed to Nebraska pursuant to section 9817 of the federal American Rescue Plan Act of 2021, Public Law 117-2, be used to eliminate unmet needs relating to home and community-based services for persons with developmental disabilities as much as is possible.

(c) If funds are distributed to Nebraska pursuant to section 9817 of the federal American Rescue Plan Act of 2021, it is the intent of the Legislature that such funds distributed to Nebraska should at least partially fund the family support program if doing so is in accordance with federal law, rules, regulations, or guidance.

(3) The family support program shall:

(a) Offer an annual capped budget for long-term services and supports of ten thousand dollars for each eligible applicant;

(b) Offer a pathway for medicaid eligibility for disabled children by disregarding parental income and establishing eligibility based on a child's income and assets;

(c) Allow a family to self-direct services, including contracting for services and supports approved by the division; and

(d) Not exceed eight hundred fifty participants.

(4) The department, in consultation with the advisory committee, shall adopt and promulgate rules and regulations for the implementation of the family support program to be set at an intermediate care facility institutional level of care to support children with intellectual and developmental disabilities and their families. Such rules and regulations shall include, but not be limited to:

(a) Criteria for and types of long-term services and supports to be provided by the family support program;

(b) The method, as provided in section 68-1532, for allocating resources to family units participating in the family support program;

(c) Eligibility determination, including, but not limited to, a child's maximum income and assets;

(d) The enrollment process;

(e) Limits on benefits; and

(f) Processes to establish quality assurance, including, but not limited to, measures of family satisfaction.

(5) The division shall administer the family support program within the limits of the appropriations by the Legislature for such program.

(6) The division shall submit an annual report electronically to the Legislature on the family support program. The report shall include:

(a) The distribution of available funds, the total number of children and families served, and the status of the waiting list for the comprehensive waiver and other applicable waivers;

(b) A summary of any grievances filed by family units pertaining to the family support program, including any appeals and a description of how such grievances were resolved;

(c) The number and demographics of children with disabilities and their families who applied under the family support program but who were not found eligible and the reason such children and their families were not found eligible;

(d) Quality assurance activities and the results of annual measures of family satisfaction; and

(e) Recommendations to innovate the family support program, improve current programming, and maximize limited funding, including, but not limited to, the potential utilization of other medicaid pathways or medicaid waivers that could help increase access to medicaid and long-term services and supports for children with disabilities or special health care needs.

Source: Laws 2022, LB376, § 2.
Effective date July 21, 2022.

68-1531 Services and support; eligibility.

In order to be eligible for services and support under section 68-1530:

(1) The child shall reside in the State of Nebraska;

(2) The income and assets of the child shall not exceed the maximum established under subsection (4) of section 68-1530;

(3) The child shall have a medically determinable physical or mental impairment or combination of impairments that (a) causes marked and severe functional limitations and (b) can be expected to cause death or has lasted or can be expected to last for a continuous period of not less than twelve months; and

(4) The child shall be determined to meet the intermediate care facility institutional level of care criteria as set forth in subsection (4) of section 68-1530.

Source: Laws 2022, LB376, § 3.
Effective date July 21, 2022.

68-1532 Family support program; services and support; priorities.

The Department of Health and Human Services shall allocate medicaid waiver benefits under section 68-1530 based on appropriations by the Legislature for such waiver and give priority status in the following order:

(1) First, to disabled children and family units in crisis situations in which the disabled child tends to self-injure or injure siblings and other family members;

(2) Second, to disabled children who are at risk for placement in juvenile detention centers, other institutional settings, or out-of-home placements;

(3) Third, to disabled children whose primary caretakers are grandparents because no other family caregivers are available to provide care;

(4) Fourth, to families who have more than one disabled child residing in the family home; and

(5) Fifth, based on the date of application under the family support program.

Source: Laws 2022, LB376, § 4.
Effective date July 21, 2022.

68-1533 Family support program; implementation; conditions.

If the federal Centers for Medicare and Medicaid Services denies the 1915(c) waiver required to be submitted in section 68-1530, the family support program outlined in sections 68-1530 to 68-1532 shall not be implemented until such waiver or other mechanism authorizing the program is approved. The Department of Health and Human Services shall submit a new waiver application or seek other mechanisms for approval if such application is denied.

Source: Laws 2022, LB376, § 5.
Effective date July 21, 2022.

68-1534 Family support program; evaluation.

The Department of Health and Human Services shall collaborate with a private, nonprofit organization with expertise in developmental disabilities for an independent evaluation of the family support program set forth in section 68-1530 if private funding is made available for such purpose. The evaluation

shall be completed by December 15, 2023, and shall be submitted electronically to the department and to the Health and Human Services Committee of the Legislature.

Source: Laws 2022, LB376, § 6.
Effective date July 21, 2022.

ARTICLE 17

WELFARE REFORM

(a) WELFARE REFORM ACT

(a) WELFARE REFORM ACT

68-1724 Cash assistance; duration; reimbursement of expenses; when; conditions; extension of time limit.

(1) Cash assistance shall be provided for a period or periods of time not to exceed a total of sixty months for recipient families with children subject to the following:

(a) If the state fails to meet the specific terms of the self-sufficiency contract developed under section 68-1719, the sixty-month time limit established in this section shall be extended;

(b) The sixty-month time period for cash assistance shall begin within the first month of eligibility;

(c) When no longer eligible to receive cash assistance, assistance shall be available to reimburse work-related child care expenses even if the recipient family has not achieved economic self-sufficiency. The amount of such assistance shall be based on a cost-shared plan between the recipient family and the state which shall provide assistance up to two hundred percent of the federal poverty level prior to October 1, 2023, or one hundred eighty-five percent of the federal poverty level on and after October 1, 2023. A recipient family may be required to contribute up to twenty percent of such family's gross income for child care. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available; and

(d) The self-sufficiency contract shall be revised and cash assistance extended when there is no job available for adult members of the recipient family. It is the intent of the Legislature that available job shall mean a job which results in an income of at least equal to the amount of cash assistance that would have been available if receiving assistance minus unearned income available to the recipient family.

The department shall develop policy guidelines to allow for cash assistance to persons who have received the maximum cash assistance provided by this section and who face extreme hardship without additional assistance. For purposes of this section, extreme hardship means a recipient family does not have adequate cash resources to meet the costs of the basic needs of food, clothing, and housing without continuing assistance or the child or children are at risk of losing care by and residence with their parent or parents.

(2) Cash assistance conditions under the Welfare Reform Act shall be as follows:

(a) Adults in recipient families shall mean individuals at least nineteen years of age living with and related to a child eighteen years of age or younger and shall include parents, siblings, uncles, aunts, cousins, or grandparents, whether the relationship is biological, adoptive, or step;

(b) The payment standard shall be based upon family size;

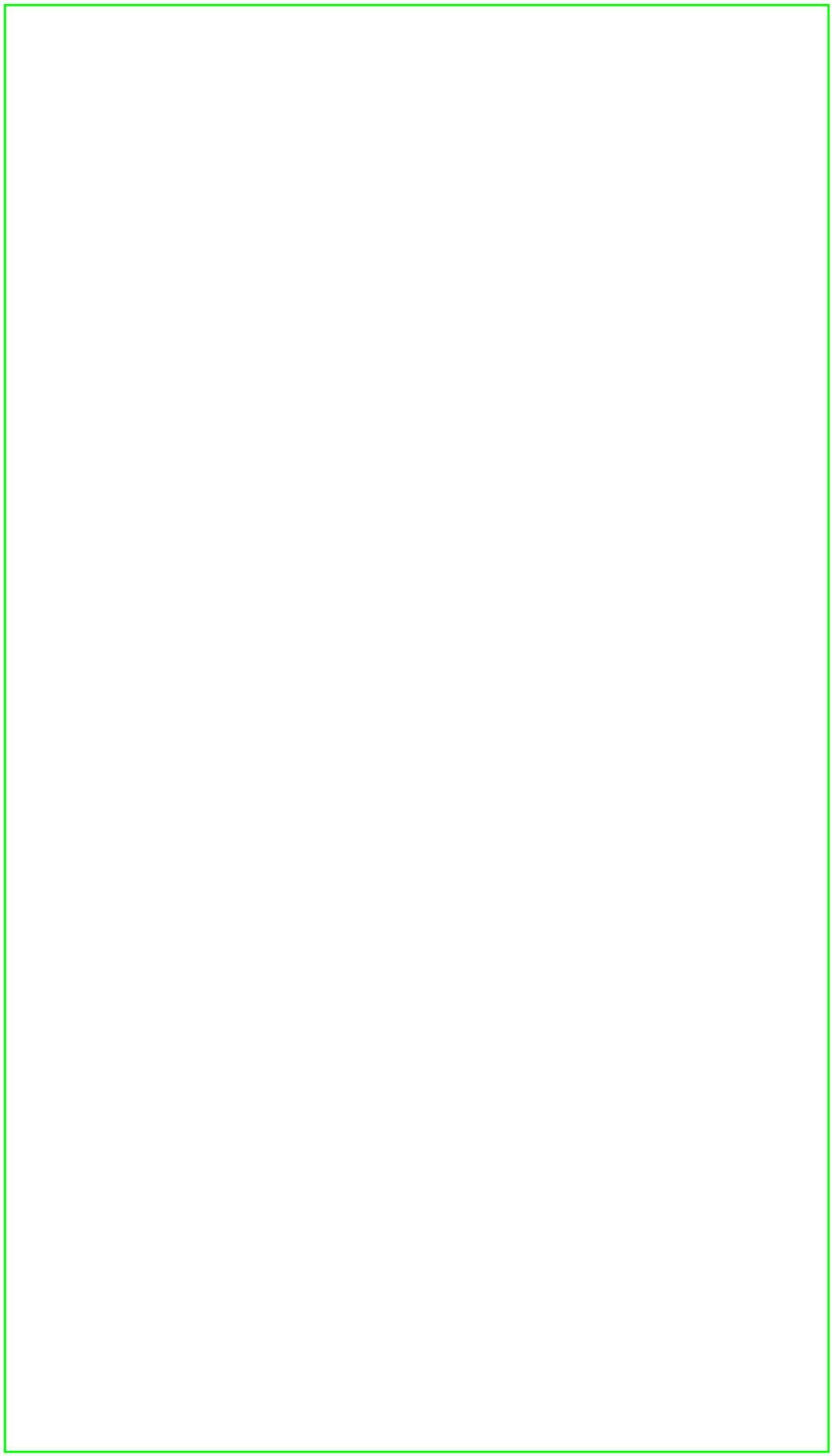
(c) The adults in the recipient family shall ensure that the minor children regularly attend school. Education is a valuable personal resource. The cash assistance provided to the recipient family may be reduced when the parent or parents have failed to take reasonable action to encourage the minor children of the recipient family ages sixteen and under to regularly attend school. No reduction of assistance shall be such as may result in extreme hardship. It is the intent of the Legislature that a process be developed to insure communication between the case manager, the parent or parents, and the school to address issues relating to school attendance;

(d) Two-parent families which would otherwise be eligible under section 43-504 or a federally approved waiver shall receive cash assistance under this section;

(e) For minor parents, the assistance payment shall be based on the minor parent's income. If the minor parent lives with at least one parent, the family's income shall be considered in determining eligibility and cash assistance payment levels for the minor parent. If the minor parent lives independently, support shall be pursued from the parents of the minor parent. If the absent parent of the minor's child is a minor, support from his or her parents shall be pursued. Support from parents as allowed under this subdivision shall not be pursued when the family income is less than three hundred percent of the federal poverty guidelines; and

(f) For adults who are not biological or adoptive parents or stepparents of the child or children in the family, if assistance is requested for the entire family, including the adults, a self-sufficiency contract shall be entered into as provided in section 68-1719. If assistance is requested for only the child or children in such a family, such children shall be eligible after consideration of the family's income and if (i) the family cooperates in pursuing child support and (ii) the minor children of the family regularly attend school.

Source: Laws 1994, LB 1224, § 24; Laws 1995, LB 455, § 15; Laws 2007, LB351, § 11; Laws 2019, LB460, § 2; Laws 2021, LB485, § 2.



CHAPTER 69
PERSONAL PROPERTY

Article.
12. Debt Management. 69-1204, 69-1206.
13. Disposition of Unclaimed Property.
(a) Uniform Disposition of Unclaimed Property Act. 69-1302 to 69-1321.
20. Degradable Products. 69-2011.
21. Consumer Rental Purchase Agreements. 69-2103 to 69-2117.
23. Disposition of Personal Property Landlord and Tenant Act. 69-2302.
24. Guns.
(c) Concealed Handgun Permit Act. 69-2436.
25. Plastic Container Coding. 69-2502, 69-2505.
27. Tobacco. 69-2703.02 to 69-2710.03.

ARTICLE 12
DEBT MANAGEMENT

Section
69-1204. License; application; fees; bond; expiration; copy of contract.
69-1206. License; renewal; fee; bond.

69-1204 License; application; fees; bond; expiration; copy of contract.

(1) Any person desiring to obtain a license to engage in the debt management business in this state shall file with the secretary an application in writing, under oath, setting forth the person's business name, the person's social security number if the applicant is an individual, the exact location of the person's office, the names and addresses of all officers and directors if an association or a corporation, if a partnership, the partnership name and the names and addresses of all partners, and if a limited liability company, the company name and the names and addresses of all members, and a copy of the certificate of registration of trade name, certificate of partnership, articles of organization, or articles of incorporation.

(2) At the time of filing the application, the applicant shall pay to the secretary a license fee of two hundred dollars for the main office within each county and one hundred dollars for each additional office. An initial investigation fee of two hundred dollars shall also be paid to the secretary at the time of filing the application.

(3) At the time of filing the application, the applicant shall furnish a bond to the people of the state in the sum of ten thousand dollars, conditioned upon the faithful accounting of all money collected upon accounts entrusted to such person engaged in debt management, and the person's employees and agents. The aggregate liability of the surety to all claimants doing business with the office for which the bond is filed shall in no event exceed the amount of such bond. The bond or bonds shall be approved by the secretary and filed in the office of the Secretary of State. No person, firm, limited liability company, or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with sections 69-1201 to 69-1217.

(4) Each licensee shall furnish with the application a blank copy of the contract that the licensee intends to use between the licensee and the debtor and shall notify the secretary of all changes and amendments thereto within thirty days after such changes and amendments.

(5) The license issued under sections 69-1201 to 69-1217 shall expire on December 31 next following its issuance unless sooner surrendered, revoked, or suspended, but may be renewed as provided in such sections.

(6) The secretary shall remit the fees received pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund.

Source: Laws 1967, c. 377, § 4, p. 1180; Laws 1982, LB 928, § 50; Laws 1983, LB 447, § 83; Laws 1993, LB 121, § 411; Laws 1997, LB 752, § 155; Laws 2020, LB910, § 29.

69-1206 License; renewal; fee; bond.

Each licensee on or before December 1 may make application to the secretary for renewal of its license. The application shall be on the form prescribed by the secretary and shall be accompanied by a fee of one hundred dollars, together with a bond as in the case of an original application. A separate application shall be made for each office. The secretary shall remit the fees received pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund.

Source: Laws 1967, c. 377, § 6, p. 1182; Laws 1982, LB 928, § 51; Laws 2020, LB910, § 30.

ARTICLE 13

DISPOSITION OF UNCLAIMED PROPERTY

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

69-1302 Property held or owing by a banking or financial organization or business association; presumed abandoned; when.

The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(a) Any demand, savings, or matured time deposit that is not automatically renewable made in this state with a banking organization, together with any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has, within five years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest or dividends; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization; or

(4) Owned other property to which subdivision (a)(1), (2), or (3) applies and if the banking organization corresponds in writing with the owner with regard to the property that would otherwise be presumed abandoned under subdivision (a) of this section at the address to which correspondence regarding the other property regularly is sent; or

(5) Had another relationship with the banking organization concerning which the owner has:

(i) Corresponded in writing with the banking organization; or

(ii) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking organization and if the banking organization corresponds in writing with the owner with regard to the property that would otherwise be abandoned under subdivision (a) of this section at the address to which correspondence regarding the other relationship regularly is sent.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit that is not automatically renewable, including a certificate of indebtedness that is not automatically renewable, made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within five years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization; or

(4) Owned other property to which subdivision (b)(1), (2), or (3) applies and if the financial organization corresponds in writing with the owner with regard to the property that would otherwise be presumed abandoned under subdivision (b) of this section at the address to which correspondence regarding the other property regularly is sent; or

(5) Had another relationship with the financial organization concerning which the owner has:

(i) Corresponded in writing with the financial organization; or

(ii) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the financial organization and if the financial organization corresponds in writing with the owner with regard to the property that would otherwise be abandoned under this subdivision (b) of this section at the address to which correspondence regarding the other relationship regularly is sent.

(c) A holder may not, with respect to property described in subdivision (a) or (b) of this section, impose any charges solely due to dormancy or cease payment of interest solely due to dormancy unless there is a written contract

between the holder and the owner of the property pursuant to which the holder may impose reasonable charges or cease payment of interest or modify the imposition of such charges and the conditions under which such payment may be ceased. A holder of such property who imposes charges solely due to dormancy may not increase such charges with respect to such property during the period of dormancy. The contract required by this subdivision may be in the form of a signature card, deposit agreement, or similar agreement which contains or incorporates by reference (1) the holder's schedule of charges and the conditions, if any, under which the payment of interest may be ceased or (2) the holder's rules and regulations setting forth the holder's schedule of charges and the conditions, if any, under which the payment of interest may be ceased.

(d)(1) Any time deposit that is automatically renewable, including a certificate of indebtedness that is automatically renewable, made in this state with a banking or financial organization, together with any interest thereon, seven years after the expiration of the initial time period or any renewal time period unless the owner has, during such initial time period or renewal time period:

(i) Increased or decreased the amount of the deposit, or presented an appropriate record or other similar evidence of the deposit for the crediting of interest;

(ii) Corresponded in writing with the banking or financial organization concerning the deposit;

(iii) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking or financial organization;

(iv) Owned other property to which subdivision (d)(1)(i), (ii), or (iii) of this section applies and if the banking or financial organization corresponds in writing with the owner with regard to the property that would otherwise be presumed abandoned under subdivision (d) of this section at the address to which correspondence regarding the other property regularly is sent; or

(v) Had another relationship with the banking or financial organization concerning which the owner has:

(A) Corresponded in writing with the banking or financial organization; or

(B) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization and if the banking or financial organization corresponds in writing with the owner with regard to the property that would otherwise be abandoned under subdivision (d) of this section at the address to which correspondence regarding the other relationship regularly is sent.

(2) If, at the time provided for delivery in section 69-1310, a penalty or forfeiture in the payment of interest would result from the delivery of a time deposit subject to subdivision (d) of this section, the time for delivery shall be extended until the time when no penalty or forfeiture would result.

(e) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit that are not automatically renewable, drafts, money orders, and traveler's checks, that, with the exception of money orders and traveler's checks, has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of (i) money orders, that has been outstanding for more than seven

years from the date of issuance and (ii) traveler's checks, that has been outstanding for more than fifteen years from the date of issuance, unless the owner has within five years, or within seven years in the case of money orders and within fifteen years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization or business association.

(f) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than three years from the date on which the lease or rental period expired. If the State Treasurer or his or her designee determines after investigation that any delivered property has insubstantial commercial value, the State Treasurer or his or her designee may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the banking or financial organization for or on account of any action taken by the State Treasurer pursuant to this subdivision.

(g) For the purposes of this section failure of the United States mails to return a letter, duly deposited therein, first-class postage prepaid, to the last-known address of an owner of tangible or intangible property shall be deemed correspondence in writing and shall be sufficient to overcome the presumption of abandonment created herein. A memorandum or writing on file with such banking or financial organization shall be sufficient to evidence such failure.

Source: Laws 1969, c. 611, § 2, p. 2479; Laws 1977, LB 305, § 1; Laws 1992, Third Spec. Sess., LB 26, § 4; Laws 2021, LB532, § 3.

69-1310 Property presumed abandoned; reports to State Treasurer; contents; filing date; property accompany report; prevent abandonment, when; verification.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under the Uniform Disposition of Unclaimed Property Act shall report to the State Treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) Except with respect to traveler's checks and money orders, the name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property presumed abandoned under the act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his or her last-known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the State Treasurer may prescribe by rule as necessary for the administration of the act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his or her name while holding the property, he or she shall file with his or her report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. A one-time supplemental report shall be filed by life insurance corporations with regard to property subject to section 69-1307.05 before November 1, 2003, as of December 31, 2002, as if section 69-1307.05 had been in effect before January 1, 2003. The property must accompany the report unless excused by the State Treasurer for good cause. The State Treasurer may postpone the reporting date upon written request by any person required to file a report. Any person holding intangible property presumed abandoned due to be reported with a cumulative value of fifty dollars or less in a single reporting year shall not be required to report the property in that year but shall report the property in any year when the property value or total report value exceeds fifty dollars.

(e) If the holder of property presumed abandoned under the act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by a limited liability company, by a member; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

Source: Laws 1969, c. 611, § 10, p. 2483; Laws 1977, LB 305, § 4; Laws 1992, Third Spec. Sess., LB 26, § 13; Laws 1993, LB 121, § 415; Laws 1994, LB 1048, § 6; Laws 2003, LB 424, § 3; Laws 2021, LB532, § 4.

69-1311 Report of property presumed abandoned; notices; time; contents; exceptions.

(a) Between March 1 and March 10 of each year the State Treasurer shall cause notice to be published once in an English language legal newspaper of general circulation in the county in this state in which is located the last-known address of any person to be named in the notice. If no address is known, then the notice shall be published in a legal newspaper having statewide circulation.

(b) The published notice shall be entitled Notice to Owners of Abandoned Property, and shall contain:

(1) The names in alphabetical order and counties of last-known addresses, if any, of persons listed in the report and entitled to notice as provided in subsection (a) of this section.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the State Treasurer.

(c) The State Treasurer is not required to publish in such notice any item of less than fifty dollars unless he or she deems such publication to be in the public interest.

(d) Within one hundred twenty days from the receipt of the report required by section 69-1310, the State Treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of fifty dollars or more presumed abandoned under the Uniform Disposition of Unclaimed Property Act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is presented by the owner to the State Treasurer, arrangements will be made to transfer the property to the owner as provided by law.

(f) This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 69-1302.

Source: Laws 1969, c. 611, § 11, p. 2485; Laws 1971, LB 648, § 1; Laws 1977, LB 305, § 5; Laws 2005, LB 476, § 1; Laws 2019, LB406, § 3.

69-1317 Abandoned property; Unclaimed Property Trust Fund; record; professional finder's fee; information withheld; when; transfers; Unclaimed Property Cash Fund; created; investment.

(a)(1) Except as otherwise provided in this subdivision, all funds received under the Uniform Disposition of Unclaimed Property Act, including the proceeds from the sale of abandoned property under section 69-1316, shall be deposited by the State Treasurer into the Unclaimed Property Trust Fund from which he or she shall make prompt payment of claims allowed pursuant to the act and payment of any expenses related to unclaimed property. All funds received under section 69-1307.05 shall be deposited by the State Treasurer into the Unclaimed Property Trust Fund from which he or she shall make prompt payment of claims regarding such funds allowed pursuant to the act. Transfers from the Unclaimed Property Trust Fund to the General Fund may be made at the direction of the Legislature. Before making the deposit he or she shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property, the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection during business hours. The separate life insur-

ance corporation demutualization trust fund terminates on March 13, 2019, and the State Treasurer shall transfer any money in the fund on such date to the Unclaimed Property Trust Fund.

The record shall not be subject to public inspection or available for copying, reproduction, or scrutiny by commercial or professional locators of property presumed abandoned who charge any service or finders' fee until twenty-four months after the names from the holders' reports have been published or officially disclosed. Records concerning the social security number, date of birth, and last-known address of an owner shall be treated as confidential and subject to the same confidentiality as tax return information held by the Department of Revenue, except that the Auditor of Public Accounts shall have unrestricted access to such records.

A professional finders' fee shall be limited to ten percent of the total dollar amount of the property presumed abandoned. To claim any such fee, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property was reported to the State Treasurer, and provide notice that the property may be claimed by the owner from the State Treasurer free of charge. To claim any such fee if the property has not yet been abandoned, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property will be reported to the State Treasurer, if known, and provide notice that, upon receipt of the property by the State Treasurer, such property may be claimed by the owner from the State Treasurer free of charge.

(2) The unclaimed property records of the State Treasurer, the unclaimed property reports of holders, and the information derived by an unclaimed property examination or audit of the records of a person or otherwise obtained by or communicated to the State Treasurer may be withheld from the public. Any record or information that may be withheld under the laws of this state or of the United States when in the possession of such a person may be withheld when revealed or delivered to the State Treasurer. Any record or information that is withheld under any law of another state when in the possession of that other state may be withheld when revealed or delivered by the other state to the State Treasurer.

Information withheld from the general public concerning any aspect of unclaimed property shall only be disclosed to an apparent owner of the property or to the escheat, unclaimed, or abandoned property administrators or officials of another state if that other state accords substantially reciprocal privileges to the State Treasurer.

(b) On or before November 1 of each year, the State Treasurer shall distribute any balance in excess of one million dollars from the Unclaimed Property Trust Fund to the permanent school fund.

(c) Before making any deposit to the credit of the permanent school fund or the General Fund, the State Treasurer may deduct any costs related to unclaimed property and place such funds in the Unclaimed Property Cash Fund which is hereby created. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Unclaimed Property Cash Fund available for investment shall be invested by the state investment

officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1969, c. 611, § 17, p. 2488; Laws 1971, LB 648, § 2; Laws 1977, LB 305, § 7; Laws 1978, LB 754, § 1; Laws 1986, LB 212, § 2; Laws 1992, Third Spec. Sess., LB 26, § 17; Laws 1994, LB 1048, § 8; Laws 1994, LB 1049, § 1; Laws 1994, LB 1066, § 63; Laws 1995, LB 7, § 67; Laws 1997, LB 57, § 1; Laws 2003, LB 424, § 4; Laws 2009, LB432, § 1; Laws 2012, LB1026, § 1; Laws 2019, LB406, § 4; Laws 2021, LB532, § 5.

Cross References

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

69-1318 Person claiming interest in property delivered to state; claim; filing; directed to nonprofit organization, when.

(1) Any person claiming an interest in any property delivered to the state under section 24-345 and the Uniform Disposition of Unclaimed Property Act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the State Treasurer.

(2) As directed by the claimant, the State Treasurer or his or her designee shall pay over or deliver any property, proceeds, and other sums payable to the claimant, to a nonprofit organization nominated by the State Treasurer.

Source: Laws 1969, c. 611, § 18, p. 2489; Laws 1980, LB 572, § 3; Laws 2021, LB532, § 6.

69-1321 Abandoned property; State Treasurer; decline to accept; when; other payments or delivery authorized.

(a) The State Treasurer or his or her designee, after receiving reports of property deemed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act, may decline to receive any property reported which he or she deems to have a value less than the cost of giving notice and holding sale, or he or she may, if he or she deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 69-1310, the State Treasurer or his or her designee shall be deemed to have elected to receive the custody of the property.

(b) A holder may pay or deliver property before the property is presumed abandoned with written consent of the State Treasurer or his or her designee and upon conditions and terms prescribed by the State Treasurer or his or her designee. Property paid or delivered under this subsection shall be held by the State Treasurer and is not presumed abandoned until such time as it otherwise would be presumed abandoned under the act.

Source: Laws 1969, c. 611, § 21, p. 2489; Laws 1992, Third Spec. Sess., LB 26, § 18; Laws 2019, LB406, § 5.

ARTICLE 20
DEGRADABLE PRODUCTS

Section
69-2011. Disposable diapers; requirements; Director of Environment and Energy; duties.

69-2011 Disposable diapers; requirements; Director of Environment and Energy; duties.

On and after October 1, 1993, a person shall not sell or offer for sale at retail any disposable diaper which is constructed of a material which is not biodegradable or photodegradable if the Director of Environment and Energy determines that biodegradable or photodegradable disposable diapers are readily available at a comparable price and quality. The determination of quality shall include a study of the environmental impact and fate of such disposable diapers. The director shall issue his or her determination to the Legislature on or before October 1, 1992. For purposes of this section (1) readily available shall mean available for purchase in sufficient quantities to meet demand through usual retail channels throughout the state and (2) comparable price and quality shall mean at a cost not in excess of five percent above the average price for products of comparable quality which are not biodegradable or photodegradable.

Source: Laws 1989, LB 325, § 11; Laws 1993, LB 3, § 42; Laws 2019, LB302, § 84.

ARTICLE 21
CONSUMER RENTAL PURCHASE AGREEMENTS

Section
69-2103. Terms, defined.
69-2104. Lessor; disclosures required.
69-2112. Advertisement; requirements.
69-2117. Cease and desist order; fine; injunction; procedures; appeal.

69-2103 Terms, defined.

For purposes of the Consumer Rental Purchase Agreement Act:

(1) Advertisement means a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer rental purchase agreement but does not include in-store merchandising aids such as window signs and ceiling banners;

(2) Cash price means the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental purchase agreement for the property;

(3) Consumer means a natural person who rents property under a consumer rental purchase agreement;

(4) Consumer rental purchase agreement means an agreement which is for the use of property by a consumer primarily for personal, family, or household purposes, which is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, which is automatically renewable with each payment, and which permits the consumer to become the owner of the property. A consumer rental purchase agreement in compliance with the

act shall not be construed to be a lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 1026.2(a)(16), as such regulation existed on January 1, 2022, and 15 U.S.C. 1602(h), as such section existed on January 1, 2022, or a lease which constitutes a consumer lease as defined in 12 C.F.R. 1013.2, as such regulation existed on January 1, 2022. Consumer rental purchase agreement does not include:

(a) Any lease for agricultural, business, or commercial purposes;

(b) Any lease made to an organization;

(c) A lease or agreement which constitutes an installment sale or installment contract as defined in section 45-335;

(d) A security interest as defined in subdivision (35) of section 1-201, Uniform Commercial Code; and

(e) A home solicitation sale as defined in section 69-1601;

(5) Consummation means the occurrence of an event which causes a consumer to become contractually obligated on a consumer rental purchase agreement;

(6) Department means the Department of Banking and Finance;

(7) Lease payment means a payment to be made by the consumer for the right of possession and use of the property for a specific lease period but does not include taxes imposed on such payment;

(8) Lease period means a week, month, or other specific period of time, during which the consumer has the right to possess and use the property after paying the lease payment and applicable taxes for such period;

(9) Lessor means a person who in the ordinary course of business operates a commercial outlet which regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement;

(10) Property means any property that is not real property under the laws of this state when made available for a consumer rental purchase agreement; and

(11) Total of payments to acquire ownership means the total of all charges imposed by the lessor and payable by the consumer as a condition of acquiring ownership of the property. Total of payments to acquire ownership includes lease payments and any initial nonrefundable administrative fee or required delivery charge but does not include taxes, late charges, reinstatement fees, or charges for optional products or services.

Source: Laws 1989, LB 681, § 3; Laws 1993, LB 111, § 2; Laws 2001, LB 641, § 1; Laws 2005, LB 570, § 3; Laws 2011, LB76, § 6; Laws 2016, LB761, § 1; Laws 2019, LB259, § 9; Laws 2020, LB909, § 49; Laws 2021, LB363, § 30; Laws 2022, LB707, § 44.
Operative date April 19, 2022.

69-2104 Lessor; disclosures required.

(1) Before entering into any consumer rental purchase agreement, the lessor shall disclose to the consumer the following items as applicable:

(a) A brief description of the leased property sufficient to identify the property to the consumer and lessor;

(b) The number, amount, and timing of all payments included in the total of payments to acquire ownership;

(c) The total of payments to acquire ownership;

(d) A statement that the consumer will not own the property until the consumer has paid the total of payments to acquire ownership plus applicable taxes;

(e) A statement that the total of payments to acquire ownership does not include other charges such as taxes, late charges, reinstatement fees, or charges for optional products or services the consumer may have elected to purchase and that the consumer should see the rental purchase agreement for an explanation of these charges;

(f) A statement that the consumer is responsible for the fair market value, remaining rent, early purchase option amount, or cost of repair of the property, whichever is less, if it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used. A statement that indicates that new property is used shall not be a violation of the Consumer Rental Purchase Agreement Act;

(h) A statement of the cash price of the property. When the agreement involves a lease for two or more items, a statement of the aggregate cash price of all items shall satisfy the requirement of this subdivision;

(i) The total amount of the initial payments required to be paid before consummation of the agreement or delivery of the property, whichever occurs later, and an itemization of the components of the initial payment, including any initial nonrefundable administrative fee or delivery charge, lease payment, taxes, or fee or charge for optional products or services;

(j) A statement clearly summarizing the terms of the consumer's options to purchase, including a statement that at any time after the first periodic payment is made the consumer may acquire ownership of the property by tendering an amount which may not exceed fifty-five percent of the difference between the total of payments to acquire ownership and the total of lease payments the consumer has paid on the property at that time;

(k) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility and a statement that if any part of a manufacturer's warranty covers the leased property at the time the consumer acquires ownership of the property, such warranty shall be transferred to the consumer if allowed by the terms of the warranty; and

(l) The date of the transaction and the names of the lessor and the consumer.

(2) With respect to matters specifically governed by the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act existed on January 1, 2022, compliance with such act shall satisfy the requirements of this section.

(3) Subsection (1) of this section shall not apply to a lessor who complies with the disclosure requirements of the federal Consumer Credit Protection Act, 15 U.S.C. 1667a, as such section existed on January 1, 2022, with respect to a consumer rental purchase agreement entered into with a consumer.

Source: Laws 1989, LB 681, § 4; Laws 2001, LB 641, § 2; Laws 2011, LB76, § 7; Laws 2016, LB761, § 2; Laws 2019, LB259, § 10; Laws 2020, LB909, § 50; Laws 2021, LB363, § 31; Laws 2022, LB707, § 45.
Operative date April 19, 2022.

69-2112 Advertisement; requirements.

(1) Any advertisement for a consumer rental purchase agreement which refers to or states the amount of any payment or the right to acquire ownership for any specific item shall also state clearly and conspicuously the following if applicable:

(a) That the transaction advertised is a consumer rental purchase agreement;

(b) The total of payments to acquire ownership; and

(c) That the consumer acquires no ownership rights until the total of payments to acquire ownership is paid.

(2) Any owner or employee of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) Subsection (1) of this section shall not apply to an advertisement which does not refer to a specific item of property, which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or any similar directory of business.

(4) With respect to matters specifically governed by the federal Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act existed on January 1, 2022, compliance with such act shall satisfy the requirements of this section.

Source: Laws 1989, LB 681, § 12; Laws 2001, LB 641, § 7; Laws 2011, LB76, § 8; Laws 2016, LB761, § 3; Laws 2019, LB259, § 11; Laws 2020, LB909, § 51; Laws 2021, LB363, § 32; Laws 2022, LB707, § 46.
Operative date April 19, 2022.

69-2117 Cease and desist order; fine; injunction; procedures; appeal.

(1) The Director of Banking and Finance may summarily order a lessor to cease and desist from the use of certain forms or practices relating to consumer rental purchase agreements if he or she finds that (a) there has been a substantial failure to comply with any of the provisions of the Consumer Rental Purchase Agreement Act or (b) the continued use of certain forms or practices relating to consumer rental purchase agreements would constitute misrepresentation to or deceit or fraud on the consumer.

(2) If the director believes, whether or not based upon an investigation conducted under section 69-2116, that any person or lessor has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Consumer Rental Purchase Agreement Act or any rule, regulation, or order under the act, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine of not to exceed one thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with the act or any order under the act.

(3) Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4) The fines and costs imposed pursuant to this section shall be in addition to all other penalties imposed by the laws of this state. The director shall collect the fines and costs and remit them to the State Treasurer. The State Treasurer shall credit the costs to the Securities Act Cash Fund and distribute the fines in accordance with Article VII, section 5, of the Constitution of Nebraska. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay a fine and costs shall constitute a separate violation of the act.

(5) Upon entry of an order pursuant to this section, the director shall promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days of the issuance of the order. Upon a receipt of a written request, the matter shall be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days and none is ordered by the director, the order shall automatically become final 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 and hearing shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 111, § 6; Laws 2001, LB 53, § 111; Laws 2019, LB259, § 12.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 23

DISPOSITION OF PERSONAL PROPERTY LANDLORD AND TENANT ACT

Section
69-2302. Terms, defined.

69-2302 Terms, defined.

For purposes of the Disposition of Personal Property Landlord and Tenant Act:

(1) Landlord means the owner, lessor, or sublessor of furnished or unfurnished premises, including self-service storage units or facilities, for rent or his or her agent or successor in interest;

(2) Owner means one or more persons, jointly or severally, in whom is vested (a) all or part of the legal title to property or (b) all or part of the beneficial

ownership and a right to present use and enjoyment of premises and shall include a mortgagee in possession;

(3) Premises means (a) a dwelling unit as defined in section 76-1410 or a distinct portion of a dwelling unit, the facilities and appurtenances in such dwelling unit, and the grounds, areas, and facilities held out for the use of tenants generally or the use of which is promised to the tenants or (b) self-service storage units or facilities;

(4) Reasonable belief means the knowledge or belief a prudent person should have without making an investigation, including any investigation of public records, except that when the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, reasonable belief shall include the actual knowledge or belief a prudent person would have if such investigation were made;

(5) Reasonable costs of storage includes:

(a) Reasonable costs actually incurred, the reasonable value of labor actually provided, or both in removing personal property from its original location on the vacated premises to the place of storage, including disassembly and transportation; and

(b) Reasonable storage costs actually incurred which shall not exceed the fair rental value of the space reasonably required for the storage of the personal property; and

(6) Tenant means a person entitled under a rental agreement to occupy any premises for rent or storage uses to the exclusion of others whether such premises are used as a dwelling unit or self-service storage unit or facility or not.

Source: Laws 1991, LB 36, § 2; Laws 1993, LB 617, § 1; Laws 2019, LB264, § 1.

ARTICLE 24

GUNS

(c) CONCEALED HANDGUN PERMIT ACT

Section
69-2436. Permit; period valid; fee; renewal; fee; notice of expiration.

(c) CONCEALED HANDGUN PERMIT ACT

69-2436 Permit; period valid; fee; renewal; fee; notice of expiration.

(1) A permit to carry a concealed handgun is valid throughout the state for a period of five years after the date of issuance. The fee for issuing a permit is one hundred dollars.

(2) The Nebraska State Patrol shall renew a permitholder's permit to carry a concealed handgun for a renewal period of five years, subject to continuing compliance with the requirements of section 69-2433, except as provided in subsection (4) of section 69-2443. The renewal fee is fifty dollars, and renewal may be applied for no earlier than four months before expiration of the permit and no later than thirty business days after the date of expiration of the permit. At least four months before expiration of a permit to carry a concealed

handgun, the Nebraska State Patrol shall send to the permitholder by United States mail or electronically notice of expiration of the permit.

(3) The applicant shall submit the fee with the application to the Nebraska State Patrol. The fee shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

Source: Laws 2006, LB 454, § 10; Laws 2007, LB322, § 17; Laws 2012, LB807, § 4; Laws 2021, LB236, § 4.

ARTICLE 25

PLASTIC CONTAINER CODING

Section
69-2502. Terms, defined.
69-2505. Repealed. Laws 2019, LB302, § 181.

69-2502 Terms, defined.

For purposes of the Plastic Container Coding Act:

(1) Code shall mean a molded, imprinted, or raised symbol on or near the bottom of a plastic bottle or rigid plastic container;

(2) Department shall mean the Department of Environment and Energy;

(3) Plastic shall mean any material made of polymeric organic compounds and additives that can be shaped by flow;

(4) Plastic bottle shall mean a plastic container intended for a single use that:

(a) Has a neck smaller than the body of the container;

(b) Is designed for a screw-top, snap cap, or other closure; and

(c) Has a capacity of not less than sixteen fluid ounces or more than five gallons; and

(5) Rigid plastic container shall mean any formed or molded container intended for a single use, composed predominately of plastic resin, that has a relatively inflexible finite shape or form with a capacity of not less than eight ounces or more than five gallons. Rigid plastic container shall not include a plastic bottle.

Source: Laws 1993, LB 63, § 2; Laws 2019, LB302, § 85.

69-2505 Repealed. Laws 2019, LB302, § 181.

ARTICLE 27

TOBACCO

Section
69-2703.02. Tobacco product manufacturer; qualified escrow fund; irrevocable assignment; form; amounts withdrawn; distribution.
69-2705. Terms, defined.
69-2706. Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts.
69-2707. Nonresident or foreign nonparticipating manufacturer; agent for service of process.
69-2707.01. Nonparticipating manufacturers; bond or cash equivalent; amount; provide evidence to Attorney General and Tax Commissioner; failure to make escrow deposits; execution upon bond.
69-2709. Revocation or suspension of stamping agent license; civil penalty; termination of license; grounds; violations; penalties; effect of

69-2703.02 Tobacco product manufacturer; qualified escrow fund; irrevocable assignment; form; amounts withdrawn; distribution.

(1) Notwithstanding subdivision (2)(b) of section 69-2703, a tobacco product manufacturer that elects to place funds into a qualified escrow fund pursuant to subdivision (2)(a) of section 69-2703 may make an irrevocable assignment of its interest in the fund to the benefit of the State of Nebraska. Such assignment shall be permanent and apply to all monetary amounts in the subject qualified escrow fund or that may subsequently come into the fund, including those deposited into the qualified escrow fund prior to the assignment being executed, those deposited into the qualified escrow fund after the assignment is executed, and interest or other appreciation on the amounts. The tobacco product manufacturer, the Attorney General, and the financial institution where the qualified escrow fund is maintained may make such amendments to the qualified escrow fund agreement, the title to the account, and the account itself as may be necessary to effectuate an assignment of rights executed pursuant to this subsection (1) or a withdrawal of amounts from the qualified escrow fund pursuant to subsection (2) of this section. An assignment of rights executed pursuant to this section shall be in writing, shall have received prior approval issued in writing by the Attorney General, shall be signed by the tobacco product manufacturer or a duly authorized representative of the tobacco product manufacturer making the assignment, and shall become effective upon delivery of the assignment to the Attorney General and the financial institution where the qualified escrow fund is maintained.

(2) Notwithstanding subdivision (2)(b) of section 69-2703, any escrow amounts assigned to the State of Nebraska pursuant to subsection (1) of this section shall be withdrawn by the state upon request by the State Treasurer and approval by the Attorney General. Any amounts withdrawn pursuant to this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska, and shall be calculated on a dollar-for-dollar basis as a credit against any judgment or settlement described in subdivision (2)(b) of section 69-2703 which may be obtained against the tobacco product manufacturer who has assigned the amounts in the subject qualified escrow fund. Nothing in this section shall be construed to relieve a tobacco product manufacturer from any past, current, or future obligations the manufacturer may have pursuant to sections 69-2701 to 69-2711.

Source: Laws 2019, LB397, § 12.

69-2705 Terms, defined.

For purposes of sections 69-2704 to 69-2711:

(1) Brand family means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, menthol, lights, kings, and 100s, and

includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, or recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes;

(2) Cigarette has the same meaning as in section 69-2702;

(3) Cigarette inputs means any machinery or other component parts typically used in the manufacture of cigarettes, including, without limitation, tobacco whether processed or unprocessed, cigarette papers and tubes, cigarette filters or any component parts intended for use in the making of cigarette filters, and any machinery typically used in the making of cigarettes;

(4) Days has the same meaning as in section 69-2702;

(5) Directory means the directory compiled by the Tax Commissioner under section 69-2706 or, in the case of references to another state's directory, the directory compiled under the similar law in that other state;

(6) Importer has the same meaning as in section 69-2702;

(7) Indian country has the same meaning as in section 69-2702;

(8) Indian tribe has the same meaning as in section 69-2702;

(9) Master Settlement Agreement has the same meaning as in section 69-2702;

(10) Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer;

(11) Nonparticipating manufacturer cigarettes means cigarettes (a) of a brand family that is not included in the certification of a participating manufacturer under subsection (1) of section 69-2706, (b) that are subject to the escrow requirement under subdivision (2) of section 69-2703 because the participating manufacturer in whose certification the brand family is included is not generally performing its financial obligations under the Master Settlement Agreement, or (c) of a brand family of a participating manufacturer that is not otherwise listed on the directory under subsection (2) of section 69-2706;

(12) Package means any pack or other container on which a state stamp or tribal stamp could be applied consistent with and as required by sections 69-2701 to 69-2711 and 77-2601 to 77-2622 that contains one or more individual cigarettes for sale. Nothing in such sections shall alter any other applicable requirement with respect to the minimum number of cigarettes that may be contained in a pack or other container of cigarettes. References to package do not include a container of multiple packages;

(13) Participating manufacturer has the same meaning as in section II(jj) of the Master Settlement Agreement;

(14) Person means any natural person, trustee, company, partnership, corporation, or other legal entity, including any Indian tribe or instrumentality thereof;

(15) Purchase means any acquisition in any manner or by any means for any consideration. The term includes transporting or receiving product in connection with a purchase;

(16) Qualified escrow fund has the same meaning as in section 69-2702;

(17) Retailer includes retail dealers as defined in section 77-2601 or anyone who is licensed under sections 28-1420 to 28-1422;

(18) Sale or sell means any transfer, exchange, or barter in any manner or by any means for any consideration. Sale or sell includes distributing or shipping product in connection with a sale;

(19) Shortfall amount means the difference between (a) the full amount of the deposit required to be made by a nonparticipating manufacturer for a calendar quarter under section 69-2703 and (b) the sum of (i) any amounts precollected by a stamping agent and deposited into escrow for that calendar quarter on behalf of the nonparticipating manufacturer under section 69-2708.01, (ii) the amount deposited into escrow by the nonparticipating manufacturer for that calendar quarter under section 69-2703, (iii) any amounts deposited into escrow for that calendar quarter under subdivision (2)(d) of section 69-2703 by an importer on such nonparticipating manufacturer's cigarettes, and (iv) any amounts collected by the state for that calendar quarter under the bond posted by the nonparticipating manufacturer under section 69-2707.01. The shortfall amount, if any, for a nonparticipating manufacturer for a calendar quarter shall be calculated by the Attorney General within fifteen days following the date on which the state determines the amount it will collect on the bond posted by the nonparticipating manufacturer as provided in section 69-2707.01;

(20) Stamping agent means a person that is authorized to affix stamps to packages or other containers of cigarettes under section 77-2603 or 77-2603.01 or any person that is required to pay the tobacco tax imposed pursuant to section 77-4008 on roll-your-own cigarettes;

(21) Tax Commissioner means the Tax Commissioner of the State of Nebraska;

(22) Tobacco product manufacturer has the same meaning as in section 69-2702;

(23) Units sold has the same meaning as in section 69-2702; and

(24) Unstamped cigarettes means any cigarettes that are not contained in a package bearing a stamp required under section 77-2603 or 77-2603.01.

Source: Laws 2003, LB 572, § 2; Laws 2011, LB590, § 6; Laws 2019, LB397, § 13.

69-2706 Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts.

(1)(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Tax Commissioner a certification to the Tax Commissioner and the Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer in compliance with subdivision (1) of section 69-2703 or is a nonparticipating manufacturer in full compliance with subdivision (2) of section 69-2703.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(c) A nonparticipating manufacturer shall include in its certification (i) a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year and (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year (A) indicating by an asterisk any brand family sold in the state during the preceding or current calendar year that is no longer being sold in the state as of the date of such certification and (B) identifying by name and address any other manufacturer of such brand families in the preceding calendar year. The nonparticipating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(d) In the case of a nonparticipating manufacturer, such certification shall further certify:

(i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process in Nebraska and provided notice thereof as required by section 69-2707;

(ii) That such nonparticipating manufacturer has established and continues to maintain a qualified escrow fund pursuant to a qualified escrow agreement that has been reviewed and approved by the Attorney General or has been submitted for review by the Attorney General;

(iii) That such nonparticipating manufacturer is in full compliance with subdivision (2) of section 69-2703 and this section and any rules and regulations adopted and promulgated pursuant thereto;

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto; (B) the account number of such qualified escrow fund and any subaccount number for the State of Nebraska; (C) the amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the dates and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the foregoing; and (D) the amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto;

(v) That such nonparticipating manufacturer consents to be sued in the district courts of the State of Nebraska for purposes of the state (A) enforcing any provision of sections 69-2703 to 69-2711 and any rules and regulations adopted and promulgated thereunder or (B) bringing a released claim as defined in section 69-2702; and

(vi) The information required to establish that such nonparticipating manufacturer has posted the appropriate bond or cash equivalent required under section 69-2707.01.

(e) A tobacco product manufacturer shall not include a brand family in its certification unless (i) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement

Agreement for the relevant year in the volume and shares determined pursuant to the Master Settlement Agreement and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of subdivision (2) of section 69-2703. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of section 69-2703.

(f) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years unless otherwise required by law to maintain them for a greater period of time.

(2) The Tax Commissioner shall develop, maintain, and make available for public inspection or publish on its website a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section and all brand families that are listed in such certifications, and:

(a) The Tax Commissioner shall not include or retain in such directory the name or brand families of any tobacco product manufacturer that has failed to provide the required certification or whose certification the commissioner determines is not in compliance with subsection (1) of this section unless the Tax Commissioner has determined that such violation has been cured to his or her satisfaction;

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General recommends and notifies the Tax Commissioner who concludes, in the case of a nonparticipating manufacturer, that (i) any escrow payment required pursuant to subdivision (2) of section 69-2703 for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General or (ii) any outstanding final judgment, including interest thereon, for violations of section 69-2703 has not been fully satisfied for such brand family and such manufacturer;

(c) As a condition to being listed and having its brand families listed in the directory, a tobacco product manufacturer shall also (i) certify annually that such manufacturer or its importer holds a valid permit under 26 U.S.C. 5713 and provide a copy of such permit to the Tax Commissioner and the Attorney General, (ii) upon request of the Tax Commissioner or Attorney General, provide documentary proof that it is not in violation of subdivision (1) of section 59-1520, and (iii) certify that it is in compliance with all reporting and registration requirements of 15 U.S.C. 376 and 376a;

(d) The Tax Commissioner shall update the directory no later than May 15 of each year to reflect certifications made on or before April 30 as required in subsection (1) of this section. The Tax Commissioner shall continuously update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of sections 69-2704 to 69-2711;

(e) The Tax Commissioner shall transmit by email or other practicable means to each stamping agent notice of any removal from the directory of any tobacco

product manufacturer or brand family. Unless otherwise provided by agreement between the stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the Tax Commissioner of the removal from the directory of that tobacco product manufacturer or the brand family or for any cigarettes returned to the stamping agent by its customers under subsection (8) of section 69-2709. The Tax Commissioner shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the stamping agent any refund due; and

(f) Every stamping agent shall provide and update as necessary an electronic mail address to the Tax Commissioner for the purpose of receiving any notifications as may be required by sections 69-2704 to 69-2711.

(3) The failure of the Tax Commissioner to provide notice of any intended removal from the directory as required under subdivision (2)(e) of this section or the failure of a stamping agent to receive such notice shall not relieve the stamping agent of its obligations under sections 69-2704 to 69-2711.

(4) It shall be unlawful for any person (a) to affix a Nebraska stamp pursuant to section 77-2603 to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, (b) to affix a tribal stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory except as authorized by an agreement pursuant to section 77-2602.06, or (c) to sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family in this state not included in the directory.

Source: Laws 2003, LB 572, § 3; Laws 2007, LB580, § 1; Laws 2011, LB590, § 7; Laws 2019, LB397, § 14.

69-2707 Nonresident or foreign nonparticipating manufacturer; agent for service of process.

(1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory created in subsection (2) of section 69-2706, appoint and continually engage without interruption the services of an agent in Nebraska to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of sections 69-2703 to 69-2711, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Tax Commissioner and Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Tax Commissioner and Attorney General thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer

shall notify the Tax Commissioner and Attorney General of the termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this section to have the nonparticipating manufacturer's brand families included or retained in the directory.

Source: Laws 2003, LB 572, § 4; Laws 2007, LB580, § 2; Laws 2011, LB590, § 8; Laws 2019, LB397, § 15.

69-2707.01 Nonparticipating manufacturers; bond or cash equivalent; amount; provide evidence to Attorney General and Tax Commissioner; failure to make escrow deposits; execution upon bond.

(1) All nonparticipating manufacturers subject to the certification requirements of section 69-2706, or whose sales are authorized pursuant to an agreement under section 77-2602.06, shall post a bond, or its cash equivalent, for the benefit of the state, which is subject to execution under subsection (5) of this section. The bond shall be posted by corporate surety located within the United States. The cash equivalent of the bond shall be posted by the nonparticipating manufacturer in an account approved by the Attorney General.

(2) The amount of the bond, or its cash equivalent, shall be the greater of:

(a) One hundred thousand dollars;

(b) The greatest required escrow amount due from the nonparticipating manufacturer, or its predecessors, successors, affiliates, importers, or stamping agents, as such terms may be defined and liabilities may be established within sections 69-2701 to 69-2711, for any of the preceding twenty calendar quarters; or

(c) The greatest required annual total of quarterly escrow amounts due from the nonparticipating manufacturer, or its predecessors, successors, affiliates, importers, or stamping agents, as such terms may be defined and liabilities may be established within sections 69-2701 to 69-2711, for any of the preceding five calendar years, if the Attorney General deems the nonparticipating manufacturer to pose an elevated risk for noncompliance.

(3) The Attorney General may deem a nonparticipating manufacturer to pose an elevated risk for noncompliance if:

(a) The nonparticipating manufacturer or its brands or brand families, or any predecessor, successor, affiliate, or importer or any of their brands or brand families, has failed to deposit fully the amount due on an escrow obligation with respect to any state at any time during the calendar year or within the preceding five calendar years unless either:

(i) The nonparticipating manufacturer did not underdeposit knowingly or recklessly and promptly cured the underdeposit within one hundred eighty days of notice of the underdeposit; or

(ii) The underdeposit or lack of deposit is the subject of a good faith dispute in the form of ongoing litigation that has not reached a final order as reasonably documented to the Attorney General and the underdeposit is cured

within one hundred eighty days of entry of a final order establishing the amount of the required escrow deposit;

(b) Any state has removed the nonparticipating manufacturer or its brands or brand families, or any predecessor, successor, affiliate, or importer or any of their brands or brand families, from the state's tobacco directory for noncompliance with the state's escrow deposit or tobacco tax laws at any time during the calendar year or within the preceding five calendar years, unless such removal is subject to a good faith dispute in the form of an ongoing challenge under administrative procedure or litigation that has not reached a final order as reasonably documented to the Attorney General;

(c) Any state has an unsatisfied final judgment against the nonparticipating manufacturer or its brands or brand families, or any predecessor, successor, affiliate, or importer or any of their brands or brand families, for escrow or for penalties, fees, costs, refunds, or attorney's fees related to noncompliance with state escrow laws;

(d) The nonparticipating manufacturer, or any predecessor, successor, or affiliate, sells its cigarettes or tobacco products directly to consumers via remote or other non-face-to-face means;

(e) A state or federal court determines that the nonparticipating manufacturer, or any predecessor, successor, or affiliate, has violated any tobacco tax or tobacco control law or engaged in unfair business practices or unfair competition;

(f) Any state has suspended or revoked a license granted to the nonparticipating manufacturer, or any predecessor, successor, or affiliate, to engage in any aspect of tobacco business, unless the suspension or revocation is subject to a good faith dispute in the form of an ongoing challenge under administrative procedure or litigation that has not reached a final order as reasonably documented to the Attorney General;

(g) Any state or federal court has determined that the nonparticipating manufacturer, or any predecessor, successor, or affiliate, failed to comply with state or federal law imposing marking, labeling, and stamping requirements or requiring information to be affixed to, or contained in, the labels, markings, or packaging; or

(h) The nonparticipating manufacturer fails to submit or complete any required forms, documents, certification, or notices, in a timely manner or to the satisfaction of the Attorney General or Tax Commissioner, unless such failure is subject to a good faith dispute in the form of an ongoing challenge under administrative procedure or litigation that has not reached a final order as reasonably documented to the Attorney General.

(4) A nonparticipating manufacturer shall post the bond or its cash equivalent and shall provide evidence of such posting to the Attorney General and Tax Commissioner both annually, as required by section 69-2706, and at least ten days in advance of each calendar quarter as a condition to the nonparticipating manufacturer and its brands or brand families being included in the directory.

(5) If a nonparticipating manufacturer that posted a bond pursuant to this section has failed to make, or have made on its behalf by an entity with joint and several liability, escrow deposits equal to the full amount owed for a quarter within fifteen days following the due date for the quarter under section 69-2703, the state may execute upon the bond, first to recover delinquent

escrow, which amount shall be deposited into a qualified escrow account under section 69-2703, and then to recover civil penalties and costs authorized under such section. Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and, as provided in subdivision (2)(d) of section 69-2703 and section 69-2708.01, from the importers and stamping agents that sold its cigarettes during that calendar quarter.

Source: Laws 2011, LB590, § 9; Laws 2019, LB397, § 16.

69-2709 Revocation or suspension of stamping agent license; civil penalty; termination of license; grounds; violations; penalties; effect of termination; eligibility for reinstatement; directory license; termination; procedure; contraband; actions to enjoin; criminal penalty; remedies cumulative.

(1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated subsection (4) of section 69-2706 or any rule or regulation adopted and promulgated pursuant thereto, the Tax Commissioner may revoke or suspend the license of any stamping agent in the manner provided by section 77-2615.01. For each violation of subsection (4) of section 69-2706 or the rules and regulations, the Tax Commissioner may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of subsection (4) of section 69-2706 or any rules or regulations adopted and promulgated pursuant thereto. Such penalty shall be imposed in the manner provided by section 77-2615.01.

(2) The license of a stamping agent shall be subject to termination if the stamping agent:

(a) Fails to provide a report required under section 69-2708, 69-2710.01, or 77-2604.01;

(b) Files an incomplete or inaccurate report required under section 69-2708, 69-2710.01, or 77-2604.01 or files an inaccurate certification required under section 69-2708, subsection (2) of section 77-2603, or section 69-2710.01;

(c) Fails to pay taxes as provided in section 77-2602 or deposit escrow as provided in section 69-2708.01;

(d) Sells cigarettes in or into the state in a package that bears a stamp required under section 77-2603 or 77-2603.01 that is not the correct stamp and provides for a lower level of tax than the correct stamp;

(e) Sells unstamped cigarettes in, into, or from the state or possesses unstamped cigarettes in the state except as provided in section 77-2607;

(f) Purchases, sells in or into the state, or affixes a stamp to a package containing cigarettes of a manufacturer or brand family that is not at the time listed in the directory, or possesses such cigarettes more than ten days after receiving notice that the manufacturer or brand family is not in the directory, unless such stamping agent possesses a directory license under section 77-2603 or unless expressly permitted under sections 69-2701 to 69-2711 or sections 77-2601 to 77-2622; or

(g) Purchases or sells cigarettes in violation of subsection (5) of this section or section 69-2710.02.

(3) In the case of a violation under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional, the stamping agent shall be entitled to cure the violation within ten days after receipt of notice of such

violation. The license of a stamping agent that fully cures the violation during that period shall not be terminated on account of that violation.

(4) In the case of a knowing or intentional violation under subdivision (2)(a), (b), (c), or (d) of this section, or of any violation described in subdivision (2)(e) or (f) of this section, the stamping agent shall for a first violation be subject to a civil penalty of up to one thousand dollars and be guilty of a Class IV misdemeanor and for a second or subsequent violation be subject to a civil penalty of up to five thousand dollars per violation and be guilty of a Class II misdemeanor. In the case of violations described in subdivision (2)(d), (e), or (f) of this section, each sale constitutes a separate offense.

(5) The Tax Commissioner shall promptly remove any stamping agent whose license is terminated from the list required by subsection (4) of section 77-2603 and shall publish a notice of the termination on the Tax Commissioner's website and send notice of the termination to all stamping agents and to all persons listed in the directory. Beginning ten days following the publication and sending of such notice, no person may sell cigarettes to, or purchase cigarettes from, the stamping agent whose license has been terminated.

(6) If a stamping agent whose license has been terminated is a tobacco product manufacturer, the tobacco product manufacturer and its brand families shall be removed from the directory.

(7) A stamping agent whose license is terminated shall be eligible for reinstatement:

(a) Ninety days following the termination, in the case of a first failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(b) One hundred eighty days following the termination, in the case of a second failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(c) One year following the termination, in the case of a third or subsequent failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(d) One year following the termination, in the case of a first knowing or intentional failure under subdivision (2)(a), (b), (c), or (d) of this section or a first violation described in subdivision (2)(e), (f), or (g) of this section; and

(e) Three years following the termination, in the case of a second or subsequent knowing or intentional failure under subdivision (2)(a), (b), (c), or (d) of this section or a second or subsequent violation described in subdivision (2)(e), (f), or (g) of this section.

(8) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of subsection (4) of section 69-2706 shall be deemed contraband under section 77-2620 and such cigarettes shall be subject to seizure and forfeiture as provided in section 77-2620, except that all such cigarettes so seized and forfeited shall be destroyed and not resold. The stamping agent shall notify its customers for a brand family with regard to any notice of removal of a tobacco product manufacturer or a brand family from the directory and give its customers a seven-day period for the return of cigarettes that become contraband.

(9) The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of subsection (4) of

section 69-2706 or section 69-2708 by a stamping agent and to compel the stamping agent to comply with subsection (4) of section 69-2706 or section 69-2708. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees. This subsection shall not apply to a stamping agent purchasing cigarettes which are not in violation of subsection (4) of section 69-2706 or section 69-2708.

(10) It is unlawful for a person to (a) sell or distribute cigarettes for sale in this state or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of subsection (4) of section 69-2706. A violation of this subsection is a Class III misdemeanor.

(11) If a court determines that a person has violated any portion of sections 69-2704 to 69-2711, the court shall order the payment of any profits, gains, gross receipts, or other benefits from the violation to be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Unless otherwise expressly provided, the remedies or penalties provided by sections 69-2704 to 69-2711 are cumulative to each other and to the remedies or penalties available under all applicable laws of this state.

(12) It is unlawful for any manufacturer, importer, or stamping agent to knowingly submit any false information required pursuant to sections 69-2703 to 69-2711. A violation of this subsection is a Class IV felony. Knowing submission of false information shall also be grounds for removal of a tobacco product manufacturer from the directory.

(13) A tobacco product manufacturer that knowingly or intentionally sells cigarettes in violation of subsection (5) of this section or section 69-2710.01 and its brand families shall be removed from the directory.

(14) A nonparticipating manufacturer whose total nationwide reported sales on which federal excise tax is paid exceed the sum of its nationwide reports under 15 U.S.C. 375 et seq. and any intrastate sales reports under 15 U.S.C. 375 et seq. by more than five percent of its total sales or one million cigarettes, whichever is less, shall be subject to removal from the directory unless it cures or satisfactorily explains the discrepancy within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 69-2708.01.

(15) Any person that is not a stamping agent or tobacco product manufacturer that fails to file a complete and accurate report required under section 69-2708, 69-2710.01, 77-2604, or 77-2604.01 shall be entitled to cure the failure within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 69-2708.01. If the person fails to fully cure the failure within such period, it shall be subject to a civil penalty of up to one thousand dollars per violation and shall be ineligible to hold any license of the state regarding cigarette sales until the date specified by subsection (7) of this section for violations of subdivision (2)(a) of this section.

(16) A directory license shall be subject to termination if the licensee acts inconsistently with its certification under subsection (2) of section 77-2603 or violates sections 69-2701 to 69-2711.

(17) Any person that knowingly or intentionally purchases or sells cigarettes in violation of subsection (5) of this section or section 69-2710.01 or that knowingly or intentionally sells cigarettes in or into the state in a package that

bears a stamp required under section 77-2603 or 77-2603.01 that is not the correct stamp and provides for a lower level of tax than the correct stamp shall for a first violation be subject to a civil penalty of up to one thousand dollars and be guilty of a Class IV misdemeanor and for a second or subsequent violation be subject to a civil penalty of up to five thousand dollars per violation and be guilty of a Class II misdemeanor. Each sale constitutes a separate violation.

Source: Laws 2003, LB 572, § 6; Laws 2007, LB580, § 4; Laws 2011, LB590, § 12; Laws 2019, LB397, § 17.

69-2710 Removal from directory; procedure.

(1) Before any tobacco product manufacturer may be removed from the directory, the Tax Commissioner shall provide the tobacco product manufacturer thirty days' notice of the intended action and shall post the notice in the directory. The tobacco product manufacturer shall have thirty days to come into compliance with sections 69-2703 to 69-2711 or, in the alternative, secure a temporary injunction against removal in the district court of Lancaster County. For purposes of the temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the directory shall constitute irreparable harm. If after thirty days the tobacco product manufacturer remains in noncompliance and has not obtained a temporary injunction pursuant to this subsection, the tobacco product manufacturer shall be removed from the directory.

(2) If the Tax Commissioner determines that a tobacco product manufacturer shall not be included in the directory, such manufacturer may request a contested case before the Tax Commissioner under the Administrative Procedure Act. The Tax Commissioner shall notify the tobacco product manufacturer in writing of the determination not to include it in the directory. A request for hearing shall be made within thirty calendar days after the date of the determination that the manufacturer shall not be included in the directory and shall contain the evidence supporting the manufacturer's compliance with sections 69-2703 to 69-2711. The hearing shall be held within sixty days after the request. At the hearing, the Tax Commissioner shall determine whether the tobacco product manufacturer is in compliance with sections 69-2703 to 69-2711 and whether the manufacturer should be listed in the directory. A final decision shall be rendered within thirty days after the hearing. Any decision of the Tax Commissioner may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2003, LB 572, § 7; Laws 2011, LB590, § 13; Laws 2019, LB397, § 18.

Cross References

Administrative Procedure Act, see section 84-920.

69-2710.01 Report; contents.

(1) Any person that during a month acquired, purchased, sold, possessed, transferred, transported, or caused to be transported in or into this state cigarettes of a tobacco product manufacturer or brand family that was not in the directory at the time shall, within fifteen days following the end of that month, file a report in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate. The report shall

contain, in addition to any further information that the Tax Commissioner may reasonably require to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711 and 77-2601 to 77-2622 and the Tobacco Products Tax Act, the following information:

(a) The total number of those cigarettes, in each case identifying by name and number of cigarettes (i) the manufacturers of those cigarettes, (ii) the brand families of those cigarettes, (iii) in the case of a sale or transfer, the name and address of the recipient of those cigarettes, (iv) in the case of an acquisition or purchase, the name and address of the seller or sender of those cigarettes, and (v) the other states in whose directory the manufacturer and brand family of those cigarettes were listed at the time and whose stamps the person is authorized to affix; and

(b) In the case of acquisition, purchase, or possession, the details of the person's subsequent sale or transfer of those cigarettes, identifying by name and number of cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer, (iii) the name and address of the recipient, (iv) the number of stamps of each other state that the person affixed to the packages containing those cigarettes during that month, (v) the total number of cigarettes contained in the packages to which it affixed each respective other state's stamp, (vi) the manufacturers and brand families of the packages to which it affixed each respective other state's stamp, and (vii) a certification that it reported each sale or transfer to the taxing authority of the other state by fifteen days following the end of the month in which the sale or transfer was made and attaching a copy of all such reports. If the subsequent sale or transfer is from this state into another state in packages not bearing a stamp of the other state, the report shall also contain the information described in subdivision (2)(c) of section 77-2604.01.

(2) Reports under this section shall be in addition to reports under sections 69-2708, 77-2604, and 77-2604.01.

Source: Laws 2011, LB590, § 14; Laws 2017, LB217, § 4; Laws 2019, LB397, § 19.

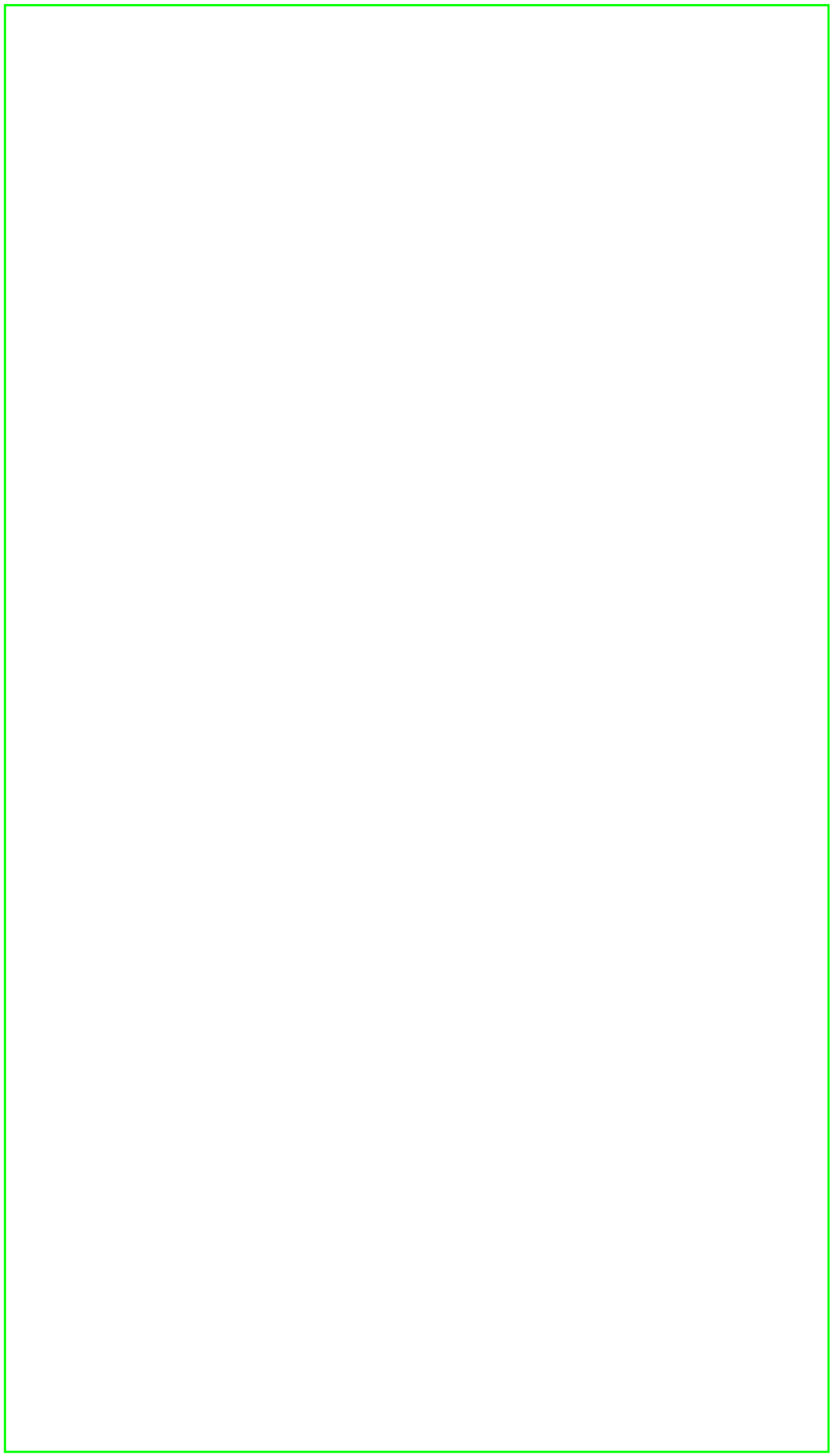
Cross References

Tobacco Products Tax Act, see section 77-4001.

69-2710.03 Rules and regulations.

The Tax Commissioner may adopt and promulgate rules and regulations necessary to effect the purposes of sections 69-2703 to 69-2711.

Source: Laws 2011, LB590, § 16; Laws 2019, LB397, § 20.



CHAPTER 70
POWER DISTRICTS AND CORPORATIONS

Article.
6. Public Power and Irrigation Districts. 70-611 to 70-663.
7. Electric Cooperative Corporations. 70-719.
10. Nebraska Power Review Board. 70-1003 to 70-1032.
16. Denial or Discontinuance of Utility Service. 70-1605, 70-1606.

ARTICLE 6
PUBLIC POWER AND IRRIGATION DISTRICTS

Section
70-611. Board of directors; election; certified notice; publication.
70-625. Public power district; powers; restrictions.
70-642.02. Repealed. Laws 2020, LB1055, § 22.
70-663. Amendment; approval procedure.

70-611 Board of directors; election; certified notice; publication.

(1) Not later than January 5 in each even-numbered year, the secretary of the district in districts grossing forty million dollars or more annually shall certify to the Secretary of State on forms prescribed by the Secretary of State the names of the counties in which all registered voters are eligible to vote for public power district candidates and for other counties the names of the election precincts within each county excluding the municipalities in which voters are not eligible to vote on public power district candidates. The secretary shall also certify the number of directors to be elected and the length of terms for which each is to be elected.

(2) Districts grossing less than forty million dollars annually shall prepare the same type of certification as districts grossing over forty million dollars annually and file such certification with the Secretary of State not later than June 15 of each even-numbered year.

(3) The secretary of each district shall, at the time of filing the certification, cause to be published once in a newspaper or newspapers of general circulation within the district a list of the incumbent directors and naming the counties or election precincts excluding those municipalities in which voters are not eligible to vote for public power district candidates in the same general form as the certification filed with the Secretary of State. A certified copy of the published notice shall be filed with the Secretary of State within ten days after such publication.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(2), p. 511; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-611; Laws 1959, c. 135, § 30, p. 526; Laws 1972, LB 1401, § 2; Laws 1973, LB 364, § 2; Laws 1975, LB 453, § 58; Laws 1994, LB 76, § 583; Laws 1997, LB 764, § 110; Laws 2021, LB285, § 17.

70-625 Public power district; powers; restrictions.

(1) Subject to the limitations of the petition for its creation and all amendments to such petition, a public power district has all the usual powers of a corporation for public purposes and may purchase, hold, sell, and lease personal property and real property reasonably necessary for the conduct of its business. No district may sell household appliances at retail if the retail price of any such appliance exceeds fifty dollars, except that newly developed electrical appliances may be merchandised and sold during the period of time in which any such appliances are being introduced to the public. New models of existing appliances shall not be deemed to be newly developed appliances. An electrical appliance shall be considered to be in such introductory period of time until the particular type of appliance is used by twenty-five percent of all the electrical customers served by such district, but such period shall in no event exceed five years from the date of introduction by the manufacturer of the new appliance to the local market.

(2) In addition to its powers authorized by Chapter 70 and specified in its petition for creation, as amended, a public power district may sell, lease, and service satellite television signal descrambling or decoding devices, satellite television programming, and equipment and services associated with such devices and programming, except that this section does not authorize public power districts (a) to provide signal descrambling or decoding devices or satellite programming to any location (i) being furnished such devices or programming on April 24, 1987, or (ii) where community antenna television service is available from any person, firm, or corporation holding a franchise pursuant to sections 18-2201 to 18-2206 or a permit pursuant to sections 23-383 to 23-388 on April 24, 1987, or (b) to sell, service, or lease C-band satellite dish systems or repair parts.

(3) In addition to the powers authorized by Chapter 70 and specified in its petition for creation as amended, the board of directors of a public power district may apply for and use funds available from the United States Department of Agriculture or other federal agencies for grants or loans to promote economic development and job creation projects in rural areas as permitted under the rules and regulations of the federal agency from which the funds are received. Any loan to be made by a district shall only be made in participation with a bank pursuant to a contract. The district and the participating bank shall determine the terms and conditions of the contract. In addition, in rural areas of the district, the board of directors of such district may provide technical or management assistance to prospective, new, or expanding businesses, including home-based businesses, provide assistance to a local or regional industrial or economic development corporation or foundation located within or contiguous to the district's service area, and provide youth and adult community leadership training.

(4) In addition to the powers authorized by Chapter 70 and specified in its petition for creation as amended, a public power district may sell or lease its dark fiber pursuant to sections 86-574 to 86-578.

(5) In addition to the powers authorized by Chapter 70 and specified in its petition for creation as amended, a public power district may develop, manufacture, use, purchase, or sell at wholesale advanced biofuels and biofuel byproducts and other fuels and fuel byproducts so long as the development,

manufacture, use, purchase, or sale of such biofuels and biofuel byproducts and other fuels and fuel byproducts is done to help offset greenhouse gas emissions.

(6) Notwithstanding any law, ordinance, resolution, or regulation of any political subdivision to the contrary, each public power district may receive funds and extend loans pursuant to the Nebraska Investment Finance Authority Act or pursuant to this section. In addition to the powers authorized by Chapter 70 and specified in its petition for creation, as amended, and without the need for further amendment thereto, a public power district may own and operate, contract to operate, or lease energy equipment and provide billing, meter reading, surveys, or evaluations and other administrative services, but not to include natural gas services, of public utility systems within a district's service territory.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp.,1941, § 70-706; Laws 1943, c. 146, § 3(1), p. 521; R.S.1943, § 70-625; Laws 1961, c. 335, § 1, p. 1045; Laws 1980, LB 954, § 62; Laws 1987, LB 23, § 1; Laws 1987, LB 345, § 1; Laws 1994, LB 915, § 2; Laws 1997, LB 658, § 8; Laws 1997, LB 660, § 1; Laws 2001, LB 827, § 15; Laws 2002, LB 1105, § 477; Laws 2020, LB899, § 1.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

70-642.02 Repealed. Laws 2020, LB1055, § 22.

70-663 Amendment; approval procedure.

(1) This subsection applies to charter amendments submitted after December 31, 2021. Upon such authorization occurring, the proposed amendment shall thereupon be submitted to the Nebraska Power Review Board, together with a petition setting forth the reasons for the adoption of such amendment, and requesting that the same be approved. The Nebraska Power Review Board shall then cause notice to be given by publication for three consecutive weeks in two legal newspapers of general circulation within such district. Such notice shall set forth in full the proposed amendment and set a date, not sooner than three weeks after the last date of publication of the notice, for protests, complaints, or objections to be filed with the Nebraska Power Review Board in opposition to the adoption of such amendment. The cost of such publication shall be paid by such district. If any person residing in such district, or affected by the proposed amendment, shall, within the time provided, file a protest, complaint, or objection, the Nebraska Power Review Board shall schedule a hearing and give due notice thereof to the district, the district's representative, and the person who filed such protest, complaint, or objection. Any person filing a protest, complaint, or objection may appear at such hearing and contest the approval by the Nebraska Power Review Board of such proposed amendment. After all protests, complaints, or objections have been heard, the Nebraska Power Review Board shall act upon the petition and either approve or disapprove the amendment. If no protests, complaints, or objections are properly filed, the board shall either approve the amendment without a hearing or schedule a hearing to determine whether or not the amendment should be approved. If a hearing is scheduled, due notice shall be provided to the district and the district representative.

(2) This subsection applies to charter amendments submitted before December 31, 2021. Following the release of the 2020 Census of Population data by the United States Department of Commerce, Bureau of the Census, as required by Public Law 94-171, any public power district seeking an amendment to its charter shall submit the proposed amendment to the Nebraska Power Review Board on or before December 17, 2021. If the proposed amendment is in proper form, the Nebraska Power Review Board shall give conditional approval of the amendment on or before December 30, 2021. The approval process provided in subsection (1) of this section shall occur concurrent with the conditional approval process. If a protest, complaint, or objection is filed and a hearing is set, any decision from the Nebraska Power Review Board rejecting the amendment shall be decided and notification provided to the Secretary of State by March 1, 2022. Immediately upon receiving such notification, the Secretary of State shall notify all election commissioners and county clerks responsible for such elections within the public power district that the conditionally approved boundaries were rejected and that the previous boundaries shall be used for the primary and general elections.

Source: Laws 1937, c. 152, § 9, p. 589; C.S.Supp.,1941, § 70-717; R.S. 1943, § 70-663; Laws 1981, LB 181, § 28; Laws 1983, LB 366, § 1; Laws 2021, LB285, § 18.

ARTICLE 7

ELECTRIC COOPERATIVE CORPORATIONS

Section
70-719. Directors; alternate directors; election; compensation; expenses.

70-719 Directors; alternate directors; election; compensation; expenses.

The directors, other than those named in the certificate of incorporation to serve until the first annual meeting of members, shall be elected annually, or as otherwise provided in the bylaws, by the members. The directors shall be members of the corporation and shall be entitled to such compensation and reimbursement for expenses incurred by them as provided in sections 81-1174 to 81-1177. The bylaws may provide for the election of alternate directors, who shall be elected and serve in the same manner as members elected to the board of directors. Such alternate directors shall serve in the event of the absence, disability, disqualification, or death of an elected director.

Source: Laws 1937, c. 50, § 19, p. 208; C.S.Supp.,1941, § 70-819; R.S. 1943, § 70-719; Laws 1974, LB 833, § 1; Laws 1981, LB 204, § 106; Laws 2020, LB381, § 56.

ARTICLE 10

NEBRASKA POWER REVIEW BOARD

Section
70-1003. Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; expenses; jurisdiction; officers; executive director; staff; reports.
70-1014.02. Legislative findings; privately developed renewable energy generation facility; owner; duties; certification; decommissioning plan; bond; joint transmission development agreement; contents; property not subject to eminent domain.
70-1015. Suppliers; electric generation facilities and transmission lines; unauthorized construction, acquisition, or service; injunction; violation;

70-1003 Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; expenses; jurisdiction; officers; executive director; staff; reports.

(1) There is hereby established an independent board to be known as the Nebraska Power Review Board to consist of five members, one of whom shall be an engineer, one an attorney, one an accountant, and two laypersons. No person who is or who has within four years preceding his or her appointment been either a director, officer, or employee of any electric utility or an elective state officer shall be eligible for membership on the board. Members of the board shall be appointed by the Governor subject to the approval of the Legislature. Upon expiration of the terms of the members first appointed, the successors shall be appointed for terms of four years. No member of the board shall serve more than two consecutive terms. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term, and any person appointed to fill a vacancy on the board shall be eligible for reappointment for two more consecutive terms. No more than three members of the board shall be registered members of that political party represented by the Governor.

(2) Each member of the board shall receive sixty dollars per day for each day actually and necessarily engaged in the performance of his or her duties, but not to exceed six thousand dollars in any one year, except for the member designated to represent the board on the Southwest Power Pool Regional State Committee or its equivalent successor, who shall receive two hundred fifty dollars for each day actually and necessarily engaged in the performance of his or her duties, not to exceed thirty-five thousand dollars in any one year. If the member designated to represent the board on the Southwest Power Pool Regional State Committee should for any reason no longer serve in that capacity during a year, the pay received while serving in such capacity shall not be used for purposes of calculating the six-thousand-dollar limitation for board members not serving in that capacity. When another board member acts as the proxy for the designated Southwest Power Pool Regional State Committee member, he or she shall receive the same pay as the designated member would have for that activity. Pay received while serving as proxy for such designated member shall not be used for purposes of determining whether the six-thousand-dollar limitation has been met for board members not serving as such designated member. Total pay to board members for activities related to the Southwest Power Pool shall not exceed an aggregate total of forty thousand dollars in any one year. Each member shall be reimbursed for expenses while so engaged as provided in sections 81-1174 to 81-1177. The board shall have jurisdiction as provided in Chapter 70, article 10.

(3) The board shall elect from their members a chairperson and a vice-chairperson. Decisions of the board shall require the approval of a majority of the members of the board.

(4) The board shall employ an executive director and may employ such other staff necessary to carry out the duties pursuant to Chapter 70, article 10. The

executive director shall serve at the pleasure of the board and shall be solely responsible to the board. The executive director shall be responsible for the administrative operations of the board and shall perform such other duties as may be delegated or assigned to him or her by the board. The board may obtain the services of experts and consultants necessary to carry out the board's duties pursuant to Chapter 70, article 10.

(5) The board shall publish and submit a biennial report with annual data to the Governor, with copies to be filed with the Clerk of the Legislature and with the Department of Environment and Energy. The report submitted to the Clerk of the Legislature shall be submitted electronically. The department shall consider the information in the Nebraska Power Review Board's report when the department prepares its own reports pursuant to sections 81-1606 and 81-1607. The report of the board shall include:

(a) The assessments for the fiscal year imposed pursuant to section 70-1020;

(b) The gross income totals for each category of the industry and the industry total;

(c) The number of suppliers against whom the assessment is levied, by category and in total;

(d) The projected dollar costs of generation, transmission, and microwave applications, approved and denied;

(e) The actual dollar costs of approved applications upon completion, and a summary of an informational hearing concerning any significant divergence between the projected and actual costs;

(f) A description of Nebraska's current electric system and information on additions to and retirements from the system during the fiscal year, including microwave facilities;

(g) A statistical summary of board activities and an expenditure summary;

(h) A roster of power suppliers in Nebraska and the assessment each paid; and

(i) Appropriately detailed historical and projected electric supply and demand statistics, including information on the total generating capacity owned by Nebraska suppliers and the total peak load demand of the previous year, along with an indication of how the industry will respond to the projected situation.

(6) The board may, in its discretion, hold public hearings concerning the conditions that may indicate that retail competition in the electric industry would benefit Nebraska's citizens and what steps, if any, should be taken to prepare for retail competition in Nebraska's electricity market. In determining whether to hold such hearings, the board shall consider the sufficiency of public interest.

(7) The board may, at any time deemed beneficial by the board, submit a report to the Governor with copies to be filed with the Clerk of the Legislature and the Natural Resources Committee of the Legislature. The report filed with the Clerk of the Legislature and the committee shall be filed electronically. The report may include:

(a) Whether or not a viable regional transmission organization and adequate transmission exist in Nebraska or in a region which includes Nebraska;

(b) Whether or not a viable wholesale electricity market exists in a region which includes Nebraska;

(c) To what extent retail rates have been unbundled in Nebraska;

(d) A comparison of Nebraska's wholesale electricity prices to the prices in the region; and

(e) Any other information the board believes to be beneficial to the Governor, the Legislature, and Nebraska's citizens when considering whether retail electric competition would be beneficial, such as, but not limited to, an update on deregulation activities in other states and an update on federal deregulation legislation.

(8) The board may establish working groups of interested parties to assist the board in carrying out the powers set forth in subsections (6) and (7) of this section.

Source: Laws 1963, c. 397, § 3, p. 1260; Laws 1971, LB 554, § 1; Laws 1978, LB 800, § 1; Laws 1980, LB 863, § 1; Laws 1981, LB 181, § 46; Laws 1981, LB 204, § 107; Laws 2000, LB 901, § 8; Laws 2010, LB797, § 1; Laws 2012, LB782, § 101; Laws 2016, LB824, § 4; Laws 2019, LB302, § 86; Laws 2020, LB381, § 57; Laws 2022, LB804, § 1.
Effective date July 21, 2022.

70-1014.02 Legislative findings; privately developed renewable energy generation facility; owner; duties; certification; decommissioning plan; bond; joint transmission development agreement; contents; property not subject to eminent domain.

(1) The Legislature finds that:

(a) Nebraska has the authority as a sovereign state to protect its land, natural resources, and cultural resources for economic and aesthetic purposes for the benefit of its residents and future generations by regulation of energy generation projects;

(b) The unique terrain and ecology of the Nebraska Sandhills provide an irreplaceable habitat for millions of migratory birds and other wildlife every year and serve as the home to numerous ranchers and farmers;

(c) The grasslands of the Nebraska Sandhills and other natural resources in Nebraska will become increasingly valuable, both economically and strategically, as the demand for food and energy increases; and

(d) The Nebraska Sandhills are home to priceless archaeological sites of historical and cultural significance to American Indians.

(2)(a) A privately developed renewable energy generation facility that meets the requirements of this section is exempt from sections 70-1012 to 70-1014.01 if no less than thirty days prior to the commencement of construction the owner of the facility:

(i) Notifies the board in writing of its intent to commence construction of a privately developed renewable energy generation facility;

(ii) Certifies to the board that the facility will meet the requirements for a privately developed renewable energy generation facility;

(iii) Certifies to the board that the private electric supplier will (A) comply with any decommissioning requirements adopted by the local governmental entities having jurisdiction over the privately developed renewable energy generation facility and (B) except as otherwise provided in subdivision (b) of

this subsection, submit a decommissioning plan to the board obligating the private electric supplier to bear all costs of decommissioning the privately developed renewable energy generation facility and requiring that the private electric supplier post a security bond or other instrument, no later than the tenth year following commercial operation, securing the costs of decommissioning the facility and provide a copy of the bond or instrument to the board;

(iv) Certifies to the board that the private electric supplier has entered into or prior to commencing construction will enter into a joint transmission development agreement pursuant to subdivision (c) of this subsection with the electric supplier owning the transmission facilities of sixty thousand volts or greater to which the privately developed renewable energy generation facility will interconnect; and

(v) Certifies to the board that the private electric supplier has consulted with the Game and Parks Commission to identify potential measures to avoid, minimize, and mitigate impacts to species identified under subsection (1) or (2) of section 37-806 during the project planning and design phases, if possible, but in no event later than the commencement of construction.

(b) The board may bring an action in the name of the State of Nebraska for failure to comply with subdivision (a)(iii)(B) of this subsection. Subdivision (a)(iii)(B) of this subsection does not apply if a local government entity with the authority to create requirements for decommissioning has enacted decommissioning requirements for the applicable jurisdiction.

(c) The joint transmission development agreement shall address construction, ownership, operation, and maintenance of such additions or upgrades to the transmission facilities as required for the privately developed renewable energy generation facility. The joint transmission development agreement shall be negotiated and executed contemporaneously with the generator interconnection agreement or other directives of the applicable regional transmission organization with jurisdiction over the addition or upgrade of transmission, upon terms consistent with prudent electric utility practices for the interconnection of renewable generation facilities, the electric supplier's reasonable transmission interconnection requirements, and applicable transmission design and construction standards. The electric supplier shall have the right to purchase and own transmission facilities as set forth in the joint transmission development agreement. The private electric supplier of the privately developed renewable energy generation facility shall have the right to construct any necessary facilities or improvements set forth in the joint transmission development agreement pursuant to the standards set forth in the agreement at the private electric supplier's cost.

(3) Within ten days after receipt of a written notice complying with subsection (2) of this section, the executive director of the board shall issue a written acknowledgment that the privately developed renewable energy generation facility is exempt from sections 70-1012 to 70-1014.01.

(4) The exemption allowed under this section for a privately developed renewable energy generation facility shall extend to and exempt all private electric suppliers owning any interest in the facility, including any successor private electric supplier which subsequently acquires any interest in the facility.

(5) No property owned, used, or operated as part of a privately developed renewable energy generation facility shall be subject to eminent domain by a consumer-owned electric supplier operating in the State of Nebraska. Nothing

in this section shall be construed to grant the power of eminent domain to a private electric supplier or limit the rights of any entity to acquire any public, municipal, or utility right-of-way across property owned, used, or operated as part of a privately developed renewable energy generation facility as long as the right-of-way does not prevent the operation of or access to the privately developed renewable energy generation facility.

(6) Only a consumer-owned electric supplier operating in the State of Nebraska may exercise eminent domain authority to acquire the land rights necessary for the construction of transmission lines and related facilities. There is a rebuttable presumption that the exercise of eminent domain to provide needed transmission lines and related facilities for a privately developed renewable energy generation facility is a public use.

(7) Nothing in this section shall be construed to authorize a private electric supplier to sell or deliver electricity at retail in Nebraska.

(8) Nothing in this section shall be construed to limit the authority of or require a consumer-owned electric supplier operating in the State of Nebraska to enter into a joint agreement with a private electric supplier to develop, construct, and jointly own a privately developed renewable energy generation facility.

Source: Laws 2010, LB1048, § 6; Laws 2011, LB208, § 3; Laws 2016, LB824, § 10; Laws 2019, LB155, § 1.

70-1015 Suppliers; electric generation facilities and transmission lines; unauthorized construction, acquisition, or service; injunction; violation; actions authorized; private electric supplier; commencement of construction prior to providing notice; violation; fine; executive director; powers and duties; dispute; hearing; procedure; decision; costs.

(1) If any supplier violates Chapter 70, article 10, by either (a) commencing the construction or finalizing or attempting to finalize the acquisition of any generation facilities, any transmission lines, or any related facilities without first providing notice or obtaining board approval, whichever is required, or (b) serving or attempting to serve at retail any customers located in Nebraska or any wholesale customers in violation of section 70-1002.02, such construction, acquisition, or service of such customers shall be enjoined in an action brought in the name of the State of Nebraska until such supplier has complied with Chapter 70, article 10.

(2) If the executive director of the board determines that a private electric supplier commenced construction of a privately developed renewable energy generation facility less than thirty days prior to providing the notice required in subdivision (2)(a) of section 70-1014.02, the executive director shall send notice via certified mail to the private electric supplier, informing it of the determination that the private electric supplier is in violation of such subdivision and is subject to a fine in the amount of five hundred dollars. The private electric supplier shall have twenty days from the date on which the notice is received in which to submit the notice described in such subdivision and to pay the fine. Within ten days after the private electric supplier submits a notice compliant with subsection (2) of section 70-1014.02 and payment of the fine, the executive director of the board shall issue the written acknowledgment described in subsection (3) of section 70-1014.02. If the private electric supplier fails to submit a notice compliant with subsection (2) of section 70-1014.02 and pay the

fine within twenty days after the date on which the private electric supplier receives the notice from the executive director of the board, the private electric supplier shall immediately cease construction or operation of the privately developed renewable energy generation facility.

(3) If the private electric supplier disputes that construction was commenced less than thirty days prior to submitting the written notice required by subdivision (2)(a) of section 70-1014.02, the private electric supplier may request a hearing before the board. Such request shall be submitted within twenty days after the private electric supplier receives the notice sent by the executive director pursuant to subsection (2) of this section. If the private electric supplier does not accept the certified mail sent pursuant to such subsection, the executive director shall send a second notice to the private electric supplier by first-class United States mail. The private electric supplier may submit a request for hearing within twenty days after the date on which the second notice was mailed.

(4) Upon receipt of a request for hearing, the board shall set a hearing date. Such hearing shall be held within sixty days after such receipt. The board shall provide to the private electric supplier written notice of the hearing at least twenty days prior to the date of the hearing. The board or its hearing officer may grant continuances upon good cause shown or upon the request of the private electric supplier. Timely filing of a request for hearing by a private electric supplier shall stay any further enforcement under this section until the board issues an order pursuant to subsection (5) of this section or the request for hearing is withdrawn.

(5) The board shall issue a written decision within sixty days after conclusion of the hearing. All costs of the hearing shall be paid by the private electric supplier if (a) the board determines that the private electric supplier commenced construction of the privately developed renewable energy generation facility less than thirty days prior to submitting the written notice required pursuant to subsection (2) of section 70-1014.02 or (b) the private electric supplier withdraws its request for hearing prior to the board issuing its decision.

(6) A private electric supplier which the board finds to be in violation of the requirements of subsection (2) of section 70-1014.02 shall either (a) pay the fine described in this section and submit a notice compliant with subsection (2) of section 70-1014.02 or (b) immediately cease construction or operation of the privately developed renewable energy generation facility.

Source: Laws 1963, c. 397, § 15, p. 1265; Laws 1967, c. 426, § 1, p. 1302; Laws 1981, LB 181, § 52; Laws 2011, LB208, § 4; Laws 2016, LB824, § 11; Laws 2018, LB1008, § 4; Laws 2019, LB155, § 2.

70-1032 Working group; members.

The scope of the study provided for under sections 70-1029 to 70-1033 shall receive input from a working group that may include, but not be limited to, members of the Legislature, the Department of Economic Development, the Department of Environment and Energy, public power districts and other Nebraska electric providers, renewable energy development companies, municipalities, the Southwest Power Pool, the Western Area Power Administration,

other transmission system owners, transmission operators, transmission developers, environmental interests, and other interested parties.

Source: Laws 2014, LB1115, § 4; Laws 2019, LB302, § 87.

ARTICLE 16

DENIAL OR DISCONTINUANCE OF UTILITY SERVICE

Section
70-1605. Discontinuance of service; notice; procedure; limitation on fees.
70-1606. Discontinuance of service; notice; contents; accessible to public.

70-1605 Discontinuance of service; notice; procedure; limitation on fees.

No public or private utility company, other than a municipal utility owned and operated by a village, furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless the utility company first gives notice to any subscriber whose service is proposed to be terminated. Such notice shall be given in person, by first-class mail, or by electronic delivery, except that electronic delivery shall only be used if the subscriber has specifically elected to receive such notices by electronic delivery. If notice is given by first-class mail or electronic delivery, such notice shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven days after notice is sent or given. Holidays and weekends shall be excluded from the seven days. A public or private utility company shall not charge a fee for the discontinuance or reconnection of utility service that exceeds the reasonable costs of providing such service.

Source: Laws 1972, LB 1201, § 1; R.R.S.1943, (1977), § 18-416; Laws 1979, LB 143, § 1; Laws 1982, LB 522, § 1; R.S.1943, (1987), § 19-2702; Laws 1988, LB 792, § 5; Laws 1996, LB 1044, § 370; Laws 2010, LB849, § 18; Laws 2015, LB104, § 1; Laws 2020, LB632, § 7.

70-1606 Discontinuance of service; notice; contents; accessible to public.

(1) The notice required by section 70-1605 shall contain the following information:

(a) The reason for the proposed disconnection;

(b) A statement of intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the utility regarding payment of the bill;

(c) The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;

(d) The name, address, and telephone number of the utility's employee or department to whom the domestic subscriber may address any inquiry or complaint;

(e) The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;

(f) A statement that the utility may not disconnect service pending the conclusion of the conference;

(g) A statement to the effect that disconnection shall be postponed or prevented upon presentation of a duly licensed physician's, physician assistant's, or advanced practice registered nurse's certificate, which shall certify that a domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the utility within five days of receiving notice under this section, excluding holidays and weekends, and will prevent the disconnection of the utility's service for a period of at least thirty days from such filing. Only one postponement of disconnection shall be required under this subdivision for each incidence of nonpayment of any past-due account;

(h) The cost that will be borne by the domestic subscriber for restoration of service;

(i) A statement that the domestic subscriber may arrange with the utility for an installment payment plan;

(j) A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and

(k) Any additional information not inconsistent with this section which has received prior approval from the board of directors or administrative board of any utility.

(2) A public or private utility company, other than a municipal utility owned and operated by a village, shall make the service termination information required under subdivisions (d), (e), (f), (g), (i), (j), and (k) of subsection (1) of this section readily accessible to the public on the website of the utility company and available by mail upon request.

Source: Laws 1979, LB 143, § 3; R.S.1943, (1987), § 19-2704; Laws 1988, LB 792, § 6; Laws 2020, LB632, § 8.

CHAPTER 71
PUBLIC HEALTH AND WELFARE

Article.

Article.
(d) Language Assessment Program. 71-4745 to 71-4747.
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(b) Nebraska Health Care Funding Act. 71-7611.
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86. Blind and Visually Impaired. 71-8604 to 71-8611.
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89. Veterinary Drug Distribution Licensing Act. 71-8901, 71-8922.01.

ARTICLE 2
PRACTICE OF BARBERING

Section
71-201. Practice of barbering; barber shop; barber school; license required; renewal; disciplinary actions; prohibited acts.
71-202.01. Terms, defined.
71-208.02. Barber school; registered instructors and assistants; qualifications.
71-219. Barbering fees; set by board; enumerated.
71-219.03. Board of Barber Examiners; set fees; manner; annual report.
71-219.05. Repealed. Laws 2022, LB705, § 5.
71-222. Board; officers; compensation; expenses; records; reports; employees.
71-224. Act, how cited.
71-256. Home barber services permit; issuance.
71-257. Home barber services permit; requirements.
71-258. Client; home inspection; limitations.
71-259. Home barber services; requirements.
71-260. Home barber services permit; renewal; revocation or expiration; effect.
71-261. Home barber services permit; owner; liability.

71-201 Practice of barbering; barber shop; barber school; license required; renewal; disciplinary actions; prohibited acts.

(1) No person shall practice or attempt to practice barbering without a license issued pursuant to the Barber Act by the board. It shall be unlawful to operate a barber shop unless it is at all times under the direct supervision and management of a licensed barber.

(2)(a) No person, partnership, limited liability company, or corporation shall operate a barber shop or barber school until a license has been obtained for that purpose from the board. If the applicant is an individual, the application shall include the applicant's social security number. All barber shop licenses shall be issued on or before June 30 of each even-numbered year, shall be effective as of July 1 of each even-numbered year, shall be valid for two years, and shall expire on June 30 of the next succeeding even-numbered year.

(b) No booth rental permits shall be required after April 19, 2022.

(3) Any barber shop which fails to renew its license on or before the expiration date may renew such license by payment of the renewal fee and a late renewal fee established by the board within sixty days after such date or such other time period as the board establishes.

(4) Any barber shop or barber school license may be suspended, revoked, or denied renewal by the board for violation of any provision of the statutes or any rule or regulation of the board pertaining to the operation or sanitation of barber shops or barber schools after due notice and hearing before the board.

(5) No person, partnership, limited liability company, or corporation shall use the title of barber or barber shop or indicate in any way that such person or entity offers barbering services unless such person or entity is licensed pursuant to the act. No person, partnership, limited liability company, or corporation shall hold itself out as a barber shop or indicate in any way that such person or entity offers barbering services unless such person or entity and the personnel who purport to offer barbering services in association with such person or entity are licensed pursuant to the act.

(6) No person, partnership, limited liability company, or corporation shall display a barber pole or use a barber pole or the image of a barber pole in its advertising unless such person or entity is licensed to provide barbering services pursuant to the act and the display or use of such barber pole or barber pole image is to indicate that the person or entity is offering barbering services.

Source: Laws 1927, c. 163, § 1, p. 427; Laws 1929, c. 154, § 1, p. 533; C.S.1929, § 71-2001; R.S.1943, § 71-201; Laws 1957, c. 294, § 1, p. 1053; Laws 1963, c. 409, § 2, p. 1315; Laws 1965, c. 417, § 1, p. 1329; Laws 1971, LB 1020, § 1; Laws 1978, LB 722, § 1; Laws 1983, LB 87, § 14; Laws 1993, LB 121, § 421; Laws 1993, LB 226, § 1; Laws 1996, LB 1044, § 481; Laws 1997, LB 622, § 85; Laws 1997, LB 752, § 164; Laws 2009, LB195, § 53; Laws 2022, LB705, § 1.
Effective date April 19, 2022.

71-202.01 Terms, defined.

For purposes of the Barber Act, unless the context otherwise requires:

(1) Barber shall mean any person who engages in the practice of any act of barbering;

(2) Barber pole shall mean a cylinder or pole with alternating stripes of red, white, and blue or any combination of them which run diagonally along the length of the cylinder or pole;

(3) Barber shop shall mean (a) an establishment or place of business properly licensed as required by the act where one or more persons properly licensed are engaged in the practice of barbering or (b) a mobile barber shop. Barber shop shall not include barber schools or colleges;

(4) Barber school or college shall mean an establishment properly licensed and operated for the teaching and training of barber students;

(5) Board shall mean the Board of Barber Examiners;

(6) Manager shall mean a licensed barber having control of the barber shop and of the persons working at or employed by the barber shop;

(7) License shall mean a certificate of registration issued by the board;

(8) Barber instructor shall mean a teacher of the barber trade as provided in the act;

(9) Assistant barber instructor shall mean a teacher of the barbering trade registered as an assistant barber instructor as required by the act;

(10) Mobile barber shop shall mean a self-contained, self-supporting, enclosed mobile unit licensed under the act as a mobile site for the performance of the practice of barbering by persons licensed under the act;

(11) Registered or licensed barber shall mean a person who has completed the requirements to receive a certificate as a barber and to whom a certificate has been issued;

(12) Secretary of the board shall mean the director appointed by the board who shall keep a record of the proceedings of the board;

(13) Student shall mean a person attending an approved, licensed barber school or college, duly registered with the board as a student engaged in learning and acquiring any and all of the practices of barbering, and who, while learning, performs and assists any of the practices of barbering in a barber school or college; and

(14) Postsecondary barber school or college shall mean an establishment properly licensed and operated for the teaching and training of barber students who have successfully completed high school or its equivalent as determined by successfully passing a general educational development test prior to admittance.

Source: Laws 1971, LB 1020, § 5; Laws 1978, LB 722, § 3; Laws 1983, LB 87, § 15; Laws 1993, LB 226, § 3; Laws 2011, LB46, § 1; Laws 2016, LB842, § 1; Laws 2018, LB731, § 79; Laws 2020, LB755, § 24.

71-208.02 Barber school; registered instructors and assistants; qualifications.

(1) All instruction in barber schools shall be conducted by registered barber instructors or registered assistant barber instructors.

(2) A person shall be eligible for registration as a barber instructor if:

(a) He or she has completed at least eighteen hours of college credit at or above the postsecondary level, including at least three credit hours each in (i)

methods of teaching, (ii) curriculum development, (iii) special vocational needs, (iv) educational psychology, (v) speech communications, and (vi) introduction to business;

(b) He or she has been a licensed and actively practicing barber for the one year immediately preceding application, except that for good cause the board may waive the requirement that the applicant be an actively practicing barber for one year or that such year immediately precede application;

(c) He or she has served as a registered assistant barber instructor under the supervision of an active, full-time, registered barber instructor, as provided in subsection (5) of this section, for nine months immediately preceding application for registration, except that for good cause the board may waive the requirement that such nine-month period immediately precede application;

(d) He or she has passed an examination prescribed by the board; and

(e) He or she has paid the fees prescribed by section 71-219.

(3) One registered barber instructor or assistant barber instructor shall be employed for each fifteen students, or fraction thereof, enrolled in a barber school, except that each barber school shall have not less than two instructors, one of whom shall be a registered barber instructor, regardless of the number of students. Additional assistant barber instructors shall be permitted on a working ratio of two assistant barber instructors for every registered barber instructor. A barber school operated by a nonprofit organization which neither charges any tuition to its students nor makes any charge to the persons upon whom work is performed shall not be required to have more than one instructor, regardless of the number of students, which instructor shall be a registered barber instructor.

(4) No student at a barber school shall be permitted to do any practical work upon any person unless a registered barber instructor or registered assistant barber instructor is on the premises and supervising the practical work being performed.

(5)(a) A person shall be eligible for registration as an assistant barber instructor if he or she has paid the fee prescribed by section 71-219, has been a licensed and actively practicing barber for one year, and is currently enrolled or will enroll at the first regular college enrollment date after registration under this section in an educational program leading to completion of the hours required under subsection (2) of this section.

(b) A person registered pursuant to subdivision (a) of this subsection shall serve as an assistant barber instructor under direct supervision, except that he or she may serve as an assistant barber instructor under indirect supervision if:

(i) He or she has completed nine college credit hours, including three credit hours each in methods of teaching, curriculum development, and special vocational needs; and

(ii) He or she has completed nine months of instructor training under the direct inhouse supervision of an active, full-time, registered barber instructor or in lieu thereof has completed the requirements of a barber instructor course developed or approved by the board. The board may develop such courses or approve courses developed by educational institutions or other entities which meet requirements established by the board in rules and regulations.

(c) A report of college credits earned pursuant to subsection (2) of this section shall be submitted to the board at the end of each academic year. Registration

as an assistant barber instructor shall be renewed in each even-numbered year and shall be valid for three years from the date of registration if the registrant pursues without interruption the educational program described in subsection (2) of this section. A registrant who fails to so maintain such program shall have his or her registration revoked. Any such registration that has been revoked shall be reinstated if all renewal fees have been paid and other registration requirements of this subsection are met.

(6) A person who is a registered barber instructor before September 9, 1993, may continue to practice as a registered barber instructor on and after such date without meeting the changes in the registration requirements of this section imposed by Laws 1993, LB 226. A person who is a registered assistant barber instructor before September 9, 1993, and who seeks to register as a barber instructor on or after September 9, 1993, may meet the requirements for registration as a barber instructor either as such requirements existed before such date or as such requirements exist on or after such date.

Source: Laws 1963, c. 409, § 11, p. 1320; Laws 1965, c. 417, § 4, p. 1330; Laws 1971, LB 22, § 1; Laws 1971, LB 1020, § 11; Laws 1983, LB 87, § 17; Laws 1993, LB 226, § 4; Laws 2009, LB195, § 54; Laws 2022, LB705, § 2.
Effective date April 19, 2022.

71-219 Barbering fees; set by board; enumerated.

The board shall set the fees to be paid:

(1) By an applicant for an examination to determine his or her fitness to receive a license to practice barbering or a registration as a barber instructor and for the issuance of the license or registration;

(2) By an applicant for registration as an assistant barber instructor;

(3) For the renewal of a license to practice barbering and for restoration of an inactive license;

(4) For the renewal of a registration to practice as a barber instructor and for the restoration of an inactive registration;

(5) For renewal of a registration to practice as an assistant barber instructor;

(6) For late renewal of a license issued under the Barber Act;

(7) For an application for a license to establish a barber shop or barber school and for the issuance of a license;

(8) For the transfer of license or change of ownership of a barber shop or barber school;

(9) For renewal of a barber license, barber instructor registration, barber shop license, or barber school license;

(10) For an application for a temporary license to conduct classes of instruction in barbering;

(11) For an affidavit for purposes of reciprocity or for issuance of a certification of licensure for purposes of reciprocity;

(12) For an application for licensure without examination pursuant to section 71-239.01 and for the issuance of a license pursuant to such section;

(13) For the sale of listings or labels; and

(14) For a returned check because of insufficient funds or no funds.

Source: Laws 1927, c. 163, § 16, p. 433; Laws 1929, c. 154, § 8, p. 537; C.S.1929, § 71-2020; Laws 1933, c. 121, § 1, p. 490; C.S.Supp.,1941, § 71-2020; R.S.1943, § 71-219; Laws 1953, c. 238, § 6, p. 827; Laws 1957, c. 294, § 7, p. 1056; Laws 1963, c. 409, § 23, p. 1324; Laws 1965, c. 417, § 6, p. 1332; Laws 1971, LB 1020, § 21; Laws 1972, LB 1183, § 4; Laws 1975, LB 66, § 3; Laws 1978, LB 722, § 14; Laws 1983, LB 87, § 23; Laws 1993, LB 226, § 7; Laws 2009, LB195, § 57; Laws 2022, LB705, § 3. Effective date April 19, 2022.

71-219.03 Board of Barber Examiners; set fees; manner; annual report.

The Board of Barber Examiners shall set the fees at a level sufficient to provide for all expenses and salaries of the board authorized in section 71-222 and in such a manner that unnecessary surpluses are avoided. The board shall annually file a report with the Attorney General and the Legislative Fiscal Analyst stating the amount of the fees set by the board. Such report shall be submitted on or before July 1 of each year. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

Source: Laws 1975, LB 66, § 7; Laws 2012, LB782, § 102; Laws 2020, LB381, § 58.

71-219.05 Repealed. Laws 2022, LB705, § 5.

71-222 Board; officers; compensation; expenses; records; reports; employees.

The board shall annually elect a president and vice president, and the board shall appoint a director who shall serve as secretary of the board. The board shall be furnished with suitable quarters in the State Capitol or elsewhere. It shall adopt and use a common seal for the authentication of its orders and records. The secretary of the board shall keep a record of all proceedings of the board. A majority of the board, in a meeting duly assembled, may perform and exercise all the duties and powers devolving upon the board. Each member of the board shall receive a compensation of seventy-five dollars per diem and shall be reimbursed for expenses incurred in the discharge of his or her duties as provided in sections 81-1174 to 81-1177, not to exceed two thousand dollars per annum. Salaries and expenses shall be paid only from the fund created by fees collected in the administration of the Barber Act, and no other funds or state money except as collected in the administration of the act shall be drawn upon to pay the expense of administration. The board shall report each year to the Governor a full statement of its receipts and expenditures and also a full statement of its work during the year, together with such recommendations as it may deem expedient. The board may employ one field inspector and such other inspectors, clerks, and other assistants as it may deem necessary to carry out the act and prescribe their qualifications. No owner, agent, or employee of any barber school shall be eligible to membership on the board.

Source: Laws 1927, c. 163, § 19, p. 435; C.S.1929, § 71-2023; Laws 1933, c. 121, § 2, p. 491; C.S.Supp.,1941, § 71-2023; R.S.1943, § 71-222; Laws 1957, c. 294, § 9, p. 1057; Laws 1963, c. 409,

§ 25, p. 1326; Laws 1971, LB 1020, § 26; Laws 1972, LB 1183, § 5; Laws 1978, LB 722, § 16; Laws 1981, LB 204, § 113; Laws 1993, LB 226, § 8; Laws 2020, LB381, § 59.

71-224 Act, how cited.

Sections 71-201 to 71-261 shall be known and may be cited as the Barber Act.

Source: Laws 1927, c. 163, § 23, p. 436; C.S.1929, § 71-2027; R.S.1943, § 71-224; Laws 1971, LB 1020, § 31; Laws 1993, LB 226, § 11; Laws 2009, LB195, § 62; Laws 2018, LB731, § 91; Laws 2020, LB755, § 25.

71-256 Home barber services permit; issuance.

(1) A barber shop may employ licensed barbers, according to the licensed activities of the barber shop, to perform home barber services by obtaining a home barber services permit.

(2) In order to obtain a home barber services permit from the board, an applicant shall:

(a) Hold a current, active barber shop license; and

(b) Submit a complete application at least ten days before the proposed date for beginning home barbering services.

(3) The board shall issue a home barber services permit to each applicant meeting the requirements set forth in this section.

Source: Laws 2020, LB755, § 26.

71-257 Home barber services permit; requirements.

In order to maintain in good standing or renew its home barber services permit, a barber shop shall at all times operate in accordance with the requirements for operation, maintain its license in good standing, and ensure that the home barber services comply with the following requirements:

(1)(a) Clients receiving home barber services shall be in emergency or persistent circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving the client's residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities.

(b) Emergency or persistent circumstances may include such conditions or situations as:

(i) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(ii) Extreme general infirmity such as that associated with the aging process;

(iii) Temporary conditions, including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(iv) Having sole responsibility for the care of an invalid dependent or a mentally disabled person requiring constant attention;

(v) Mental disability that significantly limits the client in areas of functioning described in subdivision (1)(a) of this section; or

(vi) Any other condition that, in the opinion of the board, meets the general definition of emergency or persistent circumstances;

(2) The barber shop shall determine that each person receiving home barber services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the board before home barber services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with home barber services or to whom it has provided such services within the past two years;

(3) The barber shop shall employ or contract with barbers licensed under the Barber Act to provide home barber services and shall not permit any person to perform any home barber services under its authority for which the person is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each barber shop providing home barber services shall post a daily itinerary for each barber providing home barber services. The kit used by each barber to provide home barber services shall be available for inspection at the barber shop or at the home of the client receiving the home barber services.

Source: Laws 2020, LB755, § 27.

71-258 Client; home inspection; limitations.

An agent of the board may make an operation inspection in the home of a client if the inspection is limited to the activities, procedures, and materials of the barber providing the home barber services.

Source: Laws 2020, LB755, § 28.

71-259 Home barber services; requirements.

No barber may perform home barber services except when employed by or under contract to a barber shop holding a valid home barber services permit.

Source: Laws 2020, LB755, § 29.

71-260 Home barber services permit; renewal; revocation or expiration; effect.

Each home barber services permit shall be subject to renewal at the same time as the barber shop license and shall be renewed upon request of the permitholder if the barber shop is operating its home barber services in compliance with the Barber Act and if the barber shop license is renewed. No permit that has been revoked or expired may be reinstated or transferred to another owner or location.

Source: Laws 2020, LB755, § 30.

71-261 Home barber services permit; owner; liability.

The owner of a barber shop holding a home barber services permit shall have full responsibility for ensuring that the home barber services are provided in

compliance with all applicable laws and rules and regulations and shall be liable for any violation which occurs.

Source: Laws 2020, LB755, § 31.

ARTICLE 4
HEALTH CARE FACILITIES

Section

71-401 Act, how cited.

Sections 71-401 to 71-479 shall be known and may be cited as the Health Care Facility Licensure Act.

Source: Laws 2000, LB 819, § 1; Laws 2001, LB 398, § 65; Laws 2004, LB 1005, § 41; Laws 2007, LB203, § 1; Laws 2009, LB288, § 31; Laws 2010, LB849, § 19; Laws 2010, LB999, § 1; Laws 2011, LB34, § 1; Laws 2011, LB542, § 1; Laws 2012, LB1077, § 1; Laws 2013, LB459, § 1; Laws 2015, LB37, § 68; Laws 2016, LB698, § 17; Laws 2016, LB722, § 12; Laws 2017, LB166, § 19; Laws 2018, LB731, § 92; Laws 2018, LB1034, § 50; Laws 2020, LB1052, § 5; Laws 2020, LB1053, § 3; Laws 2022, LB697, § 1. Effective date July 21, 2022.

71-403 Definitions, where found.

For purposes of the Health Care Facility Licensure Act, unless the context otherwise requires, the definitions found in sections 71-404 to 71-431 shall apply.

Source: Laws 2000, LB 819, § 3; Laws 2007, LB203, § 2; Laws 2010, LB849, § 20; Laws 2015, LB37, § 69; Laws 2016, LB698, § 18; Laws 2018, LB731, § 93; Laws 2018, LB1034, § 51; Laws 2020, LB1052, § 6; Laws 2020, LB1053, § 4; Laws 2022, LB697, § 2. Effective date July 21, 2022.

71-404 Adult day service, defined.

(1) Adult day service means a person or any legal entity which provides care and an array of social, medical, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to four or more persons who require or request such services due to age or functional impairment.

(2) Adult day service does not include services provided under the Developmental Disabilities Services Act or a PACE center.

Source: Laws 2000, LB 819, § 4; Laws 2002, LB 1062, § 39; Laws 2020, LB1053, § 5.

Cross References

Developmental Disabilities Services Act, see section 83-1201.

71-405 Ambulatory surgical center, defined.

(1) Ambulatory surgical center means a facility (a) where surgical services are provided to persons not requiring hospitalization who are discharged from such facility within twenty-three hours and fifty-nine minutes from the time of admission, (b) which meets all applicable requirements for licensure as a health clinic under the Health Care Facility Licensure Act, and (c) which has qualified for a written agreement with the Health Care Financing Administration of the United States Department of Health and Human Services or its successor to participate in medicare as an ambulatory surgical center as defined in 42 C.F.R. 416 et seq. or which receives other third-party reimbursement for such services.

(2) Ambulatory surgical center does not include an office or clinic used solely by a practitioner or group of practitioners in the practice of medicine, dentistry, or podiatry.

Source: Laws 2000, LB 819, § 5; Laws 2020, LB783, § 2.

71-413 Health care facility, defined.

Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, a PACE center, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, or a skilled nursing facility.

Source: Laws 2000, LB 819, § 13; Laws 2013, LB23, § 26; Laws 2018, LB1034, § 52; Laws 2020, LB1053, § 6.

71-415 Health care service, defined.

Health care service means an adult day service, a children's day health service, a home health agency, a hospice or hospice service, a PACE center, or a respite care service. Health care service does not include an in-home personal services agency as defined in section 71-6501.

Source: Laws 2000, LB 819, § 15; Laws 2007, LB236, § 43; Laws 2010, LB849, § 22; Laws 2020, LB1053, § 7.

71-416 Health clinic, defined.

(1) Health clinic means a facility where advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health are provided on an outpatient basis for a period of less than twenty-four consecutive hours to persons not residing or confined at such facility. Health clinic includes, but is not limited to, an ambulatory surgical center or a public health clinic.

(2) Health clinic does not include (a) a health care practitioner facility (i) unless such facility is an ambulatory surgical center, (ii) unless ten or more abortions, as defined in subdivision (1) of section 28-326, are performed during any one calendar week at such facility, or (iii) unless hemodialysis or labor and delivery services are provided at such facility, (b) a facility which provides only routine health screenings, health education, or immunizations, or (c) a PACE center.

(3) For purposes of this section:

(a) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic;

(b) Routine health screenings means the collection of health data through the administration of a screening tool designed for a specific health problem, evaluation and comparison of results to referral criteria, and referral to appropriate sources of care, if indicated; and

(c) Screening tool means a simple interview or testing procedure to collect basic information on health status.

Source: Laws 2000, LB 819, § 16; Laws 2020, LB1053, § 8.

71-417 Home health agency, defined.

(1) Home health agency means a person or any legal entity which provides skilled nursing care or a minimum of one other therapeutic service as defined by the department on a full-time, part-time, or intermittent basis to persons in a place of temporary or permanent residence used as the person's home.

(2) Home health agency does not include a PACE center.

Source: Laws 2000, LB 819, § 17; Laws 2020, LB1053, § 9.

71-422.02 MAR, defined.

MAR means a medication administration record kept by an assisted-living facility, a nursing facility, or a skilled nursing facility.

Source: Laws 2020, LB1052, § 7.

71-424.01 PACE center, defined.

PACE center means a facility from which a PACE provider offers services within the scope of a PACE program pursuant to a written agreement between the provider, the United States Department of Health and Human Services, and the Nebraska Department of Health and Human Services.

Source: Laws 2020, LB1053, § 10.

71-424.02 PACE program, defined.

PACE program means a program of all-inclusive care for elderly under 42 U.S.C. 13964, as such section existed on January 1, 2020.

Source: Laws 2020, LB1053, § 11.

71-424.03 PACE provider, defined.

PACE provider means provider of services pursuant to a PACE program meeting the requirements of 42 U.S.C. 1396u-4(a)(3), as such section existed on January 1, 2020.

Source: Laws 2020, LB1053, § 12.

71-428.01 Rural emergency hospital, defined.

Rural emergency hospital means a facility that:

(1) Meets the eligibility requirements described in section 71-477;

(2) Provides rural emergency hospital services;

(3) Maintains an emergency department to provide rural emergency hospital services in the facility twenty-four hours per day that is staffed twenty-four hours per day and seven days per week, with a physician, nurse practitioner, clinical nurse specialist, or physician assistant;

(4) Has a transfer agreement in effect with a comprehensive level trauma center or an advanced level trauma center as defined in the Statewide Trauma System Act and any other transfer agreement necessary for patient care; and

(5) Meets such other requirements as the department finds necessary in the interest of the health and safety of individuals who are provided rural emergency hospital services and to implement licensure under the Health Care Facility Licensure Act that satisfies requirements for reimbursement by federal health care programs as a rural emergency hospital.

Source: Laws 2022, LB697, § 3.
Effective date July 21, 2022.

Cross References

Statewide Trauma System Act, see section 71-8201.

71-428.02 Rural emergency hospital services, defined.

Rural emergency hospital services means the following services, provided by a rural emergency hospital, that do not require in excess of an annual per-patient average of twenty-four hours in such rural emergency hospital:

(1) Emergency department services and observation care; and

(2) At the election of the rural emergency hospital, for services provided on an outpatient basis, other medical and health services as specified in regulations adopted by the United States Secretary of Health and Human Services and authorized by the Nebraska Department of Health and Human Services.

Source: Laws 2022, LB697, § 4.
Effective date July 21, 2022.

71-436 License; multiple services or locations; effect.

(1) Except as otherwise provided in section 71-470, an applicant for licensure under the Health Care Facility Licensure Act shall obtain a separate license for each type of health care facility or health care service that the applicant seeks

to operate. A single license may be issued for (a) a facility or service operating in separate buildings or structures on the same premises under one management, (b) an inpatient facility that provides services on an outpatient basis at multiple locations, or (c) a health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by such health clinic and sharing administration with such clinics. A single license shall be issued for a PACE center which meets the requirements for licensure established by the department pursuant to section 71-457.

(2) The department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed. The department may inspect any of the locations that are covered by the license. If an entity is licensed in multiple types of licensure for one location, the department shall conduct all required inspections simultaneously for all types of licensure when requested by the entity.

Source: Laws 2000, LB 819, § 36; Laws 2002, LB 1062, § 43; Laws 2015, LB37, § 72; Laws 2020, LB1053, § 13.

71-439 Design standards for health care facilities; adoption by Legislature; waiver of rule, regulation, or standard; when; procedure.

(1)(a) For purposes of construction relating to ambulatory surgical centers, critical access hospitals, general acute hospitals, and hospitals, the Legislature adopts the 2018 Guidelines for Design and Construction of Hospitals, the 2018 Guidelines for Design and Construction of Outpatient Facilities, and the 2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities published by the Facility Guidelines Institute.

(b) For new construction of assisted-living facilities, long-term care hospitals, nursing facilities, and skilled nursing facilities on or after September 1, 2019, the Legislature adopts the 2018 Guidelines for Design and Construction of Hospitals, the 2018 Guidelines for Design and Construction of Outpatient Facilities, and the 2018 Guidelines for Design and Construction of Residential Health, Care, and Support Facilities published by the Facility Guidelines Institute, except that the Legislature adopts only the definition of new construction found in section 1.1-2.1 and excludes the part of the definition found in sections 1.1-2.2 and 1.1-2.3 and any related provisions of such guidelines.

(2) The department may waive any rule, regulation, or standard adopted and promulgated by the department relating to construction or physical plant requirements of a licensed health care facility or health care service upon proof by the licensee satisfactory to the department (a) that such waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in or served by the facility or service, (b) that such rule, regulation, or standard would create an unreasonable hardship for the facility or service, and (c) that such waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(3) In evaluating the issue of unreasonable hardship, the department shall consider the following:

(a) The estimated cost of the modification or installation;

(b) The extent and duration of the disruption of the normal use of areas used by persons residing in or served by the facility or service resulting from construction work;

(c) The estimated period over which the cost would be recovered through reduced insurance premiums and increased reimbursement related to cost;

(d) The availability of financing; and

(e) The remaining useful life of the building.

(4) Any such waiver may be granted under such terms and conditions and for such period of time as provided in rules and regulations adopted and promulgated by the department.

Source: Laws 2000, LB 819, § 39; Laws 2019, LB409, § 1.

71-476 Drugs and devices; labeling requirements.

(1) In an assisted-living facility, a nursing facility, or a skilled nursing facility, all drugs and devices shall be labeled in accordance with currently accepted professional standards of care, including the appropriate accessory and cautionary instructions and the expiration date when applicable.

(2) If the dosage or directions for a specific drug or device to be used in an assisted-living facility, a nursing facility, or a skilled nursing facility are changed by a health care practitioner authorized to prescribe controlled substances and credentialed under the Uniform Credentialing Act, a pharmacist shall apply a new label as soon as practicable with the correct dosage or directions to the drug or device package or reissue the drug or device with the correct label. To protect the safety of the resident of such a facility receiving the drug or device until the drug or device can be correctly labeled, the drug or device package shall be temporarily flagged with a sticker indicating dose change, drug change, or MAR, to alert nursing staff or an unlicensed person responsible for providing the drug or device to a resident that the dosage or directions have changed and the drug or device is to be provided according to the corrected information contained in the resident's MAR, if one exists.

Source: Laws 2020, LB1052, § 8.

Cross References

Uniform Credentialing Act, see section 38-101.

71-477 Rural emergency hospital; license; eligibility; application; operation; requirements; original license; inactive.

(1) A facility shall be eligible to apply for a license as a rural emergency hospital if such facility is:

(a) Licensed as a critical access hospital;

(b) Licensed as a general hospital with not more than fifty licensed beds located in a county in a rural area as defined in section 1886(d)(2)(D) of the federal Social Security Act; or

(c) Licensed as a general hospital with not more than fifty licensed beds that is deemed as being located in a rural area pursuant to section 1886(d)(8)(E) of the federal Social Security Act.

(2) A facility applying for licensure as a rural emergency hospital shall include with the application:

(a) An action plan for initiating rural emergency hospital services, including a detailed transition plan that lists the specific services that the facility will retain, modify, add, and discontinue;

(b) A description of services that the facility intends to provide on an outpatient basis; and

(c) Such other information as required by rules and regulations adopted and promulgated by the department.

(3) A rural emergency hospital shall not have inpatient beds, except that such hospital may have a unit that is a distinct part of such hospital and that is licensed as a skilled nursing facility to provide post-hospital extended care services.

(4) A rural emergency hospital may own and operate an entity that provides ambulance services.

(5) A licensed general hospital or critical access hospital that applies for and receives licensure as a rural emergency hospital and elects to operate as a rural emergency hospital shall retain its original license as a general hospital or critical access hospital. Such original license shall remain inactive while the rural emergency hospital license is in effect.

Source: Laws 2022, LB697, § 5.
Effective date July 21, 2022.

71-478 Rural emergency hospital; federal reimbursement; contracts.

A licensed rural emergency hospital may enter into any contracts required to be eligible for federal reimbursement as a rural emergency hospital.

Source: Laws 2022, LB697, § 6.
Effective date July 21, 2022.

71-479 Rural emergency hospital; rules and regulations.

The department shall adopt and promulgate rules and regulations establishing minimum standards for the establishment and operation of rural emergency hospitals in accordance with the Health Care Facility Licensure Act, including licensure of rural emergency hospitals.

Source: Laws 2022, LB697, § 7.
Effective date July 21, 2022.

ARTICLE 5

DISEASES

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

(c) INHERITED OR CONGENITAL INFANT OR CHILDHOOD-ONSET DISEASES

Section

(m) CYTOMEGALOVIRUS

71-558. Cytomegalovirus; informational materials; department; duties.
71-559. Health care provider; provide informational materials; when.
71-560. Birthing facility; newborn infant; hearing screening test; information provided.

(n) ALZHEIMER'S DISEASE AND OTHER DEMENTIA SUPPORT ACT

71-561. Act, how cited.
71-562. Legislative findings and declarations.
71-563. Terms, defined.
71-564. Alzheimer's Disease and Other Dementia Advisory Council; members; duties; expenses.
71-565. Council; purpose; collaboration.
71-566. Council; considerations; findings and recommendations.
71-567. State Alzheimer's Plan.

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

71-503.02 Chlamydia, gonorrhea, or trichomoniasis; prescription oral antibiotic drugs; powers of medical professionals; restrictions.

If a physician, a physician assistant, a nurse practitioner, or a certified nurse midwife licensed under the Uniform Credentialing Act diagnoses a patient as having chlamydia, gonorrhea, or trichomoniasis, the physician may prescribe, provide drug samples of, or dispense pursuant to section 38-2850, and the physician assistant, nurse practitioner, or certified nurse midwife may prescribe or provide drug samples of, prescription oral antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner or partners. Adequate directions for use and medication guides, where applicable, shall be provided along with additional prescription oral antibiotic drugs for any additional partner. The physician, physician assistant, nurse practitioner, or certified nurse midwife shall at the same time provide written information about chlamydia, gonorrhea, and trichomoniasis to the patient for the patient to provide to the partner or partners. The oral antibiotic drugs prescribed, provided, or dispensed pursuant to this section must be stored, dispensed, and labeled in accordance with federal and state pharmacy laws and regulations. Prescriptions for the patient's sexual partner or partners must include the partner's name. If the infected patient is unwilling or unable to deliver such prescription oral antibiotic drugs to his or her sexual partner or partners, such physician may prescribe, provide, or dispense pursuant to section 38-2850 and such physician assistant, nurse practitioner, or certified nurse midwife may prescribe or provide samples of the prescription oral antibiotic drugs for delivery to such partner, if such practitioner has sufficient locating information.

Source: Laws 2013, LB528, § 1; Laws 2019, LB62, § 1.

Cross References

Uniform Credentialing Act, see section 38-101.

71-507 Terms, defined.

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;

(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 emergency care provider licensed pursuant to the Emergency Medical Services Practice Act or authorized pursuant to the EMS Personnel Licensure Interstate Compact, 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 38-1414 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 38-1419;

(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.

Source: Laws 1989, LB 157, § 1; Laws 1991, LB 244, § 2; Laws 1992, LB 1138, § 20; Laws 1994, LB 1210, § 111; Laws 1996, LB 1044, § 497; Laws 1996, LB 1155, § 27; Laws 1997, LB 138, § 46; Laws 1997, LB 608, § 5; Laws 1999, LB 781, § 1; Laws 2000, LB 819, § 95; Laws 2003, LB 55, § 1; Laws 2006, LB 1115, § 36; Laws 2007, LB296, § 385; Laws 2007, LB463, § 1182; Laws 2018, LB1034, § 58; Laws 2020, LB1002, § 45.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.
EMS Personnel Licensure Interstate Compact, see section 38-3801.

71-509 Health care facility or alternate facility; emergency services provider; significant exposure; completion of form; reports required; tests; notification; costs.

(1) If a health care facility or alternate facility determines that a patient treated or transported by an emergency services provider has been diagnosed or detected with an infectious airborne disease, the health care facility or alternate facility shall notify the department as soon as practical but not later than forty-eight hours after the determination has been made. The department shall investigate all notifications from health care facilities and alternate facilities and notify as soon as practical the physician medical director of each emergency medical service with an affected emergency medical care provider employed by or associated with the service, the fire chief of each fire department with an affected firefighter employed by or associated with the department, the head of each law enforcement agency with an affected peace officer employed by or associated with the agency, the funeral director of each funeral establishment with an affected individual employed by or associated with the funeral establishment, and any emergency services provider known to the department with a significant exposure who is not employed by or associated with an emergency medical service, a fire department, a law enforcement agency, or a funeral establishment. Notification of affected individuals shall be made as soon as practical.

(2) Whenever an emergency services provider believes he or she has had a significant exposure while acting as an emergency services provider, he or she may complete a significant exposure report form. A copy of the completed form shall be given by the emergency services provider to the health care facility or alternate facility, to the emergency services provider's supervisor, and to the designated physician.

(3) Upon receipt of the significant exposure form, if a patient has been diagnosed during the normal course of treatment as having an infectious disease or condition or information is received from which it may be concluded that a patient has an infectious disease or condition, the health care facility or alternate facility receiving the form shall notify the designated physician pursuant to subsection (5) of this section. If the patient has not been diagnosed as having an infectious disease or condition and upon the request of the designated physician, the health care facility or alternate facility shall request the patient's attending physician or other responsible person to order the necessary

diagnostic testing of the patient to determine the presence of an infectious disease or condition. Upon such request, the patient's attending physician or other responsible person shall order the necessary diagnostic testing subject to section 71-510. Each health care facility shall develop a policy or protocol to administer such testing and assure confidentiality of such testing.

(4) Results of tests conducted under this section and section 71-510 shall be reported by the health care facility or alternate facility that conducted the test to the designated physician and to the patient's attending physician, if any.

(5) Notification of the patient's diagnosis of infectious disease or condition, including the results of any tests, shall be made orally to the designated physician within forty-eight hours of confirmed diagnosis. A written report shall be forwarded to the designated physician within seventy-two hours of confirmed diagnosis.

(6) Upon receipt of notification under subsection (5) of this section, the designated physician shall notify the emergency services provider of the exposure to infectious disease or condition and the results of any tests conducted under this section and section 71-510.

(7) The notification to the emergency services provider shall include the name of the infectious disease or condition diagnosed but shall not contain the patient's name or any other identifying information. Any person receiving such notification shall treat the information received as confidential and shall not disclose the information except as provided in sections 71-507 to 71-513.

(8) The provider agency shall be responsible for the costs of diagnostic testing required under this section and section 71-510, except that if a person renders emergency care gratuitously as described in section 25-21,186, such person shall be responsible for the costs.

(9) The patient's attending physician shall inform the patient of test results for all tests conducted under such sections.

Source: Laws 1989, LB 157, § 3; Laws 1997, LB 138, § 48; Laws 1999, LB 781, § 2; Laws 2020, LB1002, § 46.

(c) INHERITED OR CONGENITAL INFANT OR CHILDHOOD-ONSET DISEASES

71-519 Screening test; duties; disease management; duties; fees authorized; immunity from liability.

(1) All infants born in the State of Nebraska shall be screened for phenylketonuria, congenital primary hypothyroidism, biotinidase deficiency, galactosemia, hemoglobinopathies, medium-chain acyl co-a dehydrogenase (MCAD) deficiency, X-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoses type 1 (MPS-1), Pompe disease, spinal muscular atrophy, and such other inherited or congenital infant or childhood-onset diseases as the Department of Health and Human Services may from time to time specify. Confirmatory tests shall be performed if a presumptive positive result on the screening test is obtained.

(2) The attending physician shall collect or cause to be collected the prescribed blood specimen or specimens and shall submit or cause to be submitted the same to the laboratory designated by the department for the performance of such tests within the period and in the manner prescribed by the department. If a birth is not attended by a physician and the infant does not have a physician,

the person registering the birth shall cause such tests to be performed within the period and in the manner prescribed by the department. The laboratory shall within the period and in the manner prescribed by the department perform such tests as are prescribed by the department on the specimen or specimens submitted and report the results of these tests to the physician, if any, the hospital or other birthing facility or other submitter, and the department. The laboratory shall report to the department the results of such tests that are presumptive positive or confirmed positive within the period and in the manner prescribed by the department.

(3) The hospital or other birthing facility shall record the collection of specimens for tests for metabolic diseases and the report of the results of such tests or the absence of such report. For purposes of tracking, monitoring, and referral, the hospital or other birthing facility shall provide from its records, upon the department's request, information about the infant's and mother's location and contact information, and care and treatment of the infant.

(4)(a) The department shall have authority over the use, retention, and disposal of blood specimens and all related information collected in connection with disease testing conducted under subsection (1) of this section.

(b) The department shall adopt and promulgate rules and regulations relating to the retention and disposal of such specimens. The rules and regulations shall: (i) Be consistent with nationally recognized standards for laboratory accreditation and shall comply with all applicable provisions of federal law; (ii) require that the disposal be conducted in the presence of a witness who may be an individual involved in the disposal or any other individual; and (iii) provide for maintenance of a written or electronic record of the disposal, verified by such witness.

(c) The department shall adopt and promulgate rules and regulations relating to the use of such specimens and related information. Such use shall only be made for public health purposes and shall comply with all applicable provisions of federal law. The department may charge a reasonable fee for evaluating proposals relating to the use of such specimens for public health research and for preparing and supplying specimens for research proposals approved by the department.

(5) The department shall prepare written materials explaining the requirements of this section. The department shall include the following information in the pamphlet:

(a) The nature and purpose of the testing program required under this section, including, but not limited to, a brief description of each condition or disorder listed in subsection (1) of this section;

(b) The purpose and value of the infant's parent, guardian, or person in loco parentis retaining a blood specimen obtained under subsection (6) of this section in a safe place;

(c) The department's procedures for retaining and disposing of blood specimens developed under subsection (4) of this section; and

(d) That the blood specimens taken for purposes of conducting the tests required under subsection (1) of this section may be used for research pursuant to subsection (4) of this section.

(6) In addition to the requirements of subsection (1) of this section, the attending physician or person registering the birth may offer to draw an

additional blood specimen from the infant. If such an offer is made, it shall be made to the infant's parent, guardian, or person in loco parentis at the time the blood specimens are drawn for purposes of subsection (1) of this section. If the infant's parent, guardian, or person in loco parentis accepts the offer of an additional blood specimen, the blood specimen shall be preserved in a manner that does not require special storage conditions or techniques. The attending physician or person making the offer shall explain to the parent, guardian, or person in loco parentis at the time the offer is made that the additional blood specimen can be used for future identification purposes and should be kept in a safe place. The attending physician or person making the offer may charge a fee that is not more than the actual cost of obtaining and preserving the additional blood specimen.

(7) The person responsible for causing the tests to be performed under subsection (2) of this section shall inform the parent or legal guardian of the infant of the tests and of the results of the tests and provide, upon any request for further information, at least a copy of the written materials prepared under subsection (5) of this section.

(8) Dietary and therapeutic management of the infant with phenylketonuria, primary hypothyroidism, biotinidase deficiency, galactosemia, hemoglobinopathies, MCAD deficiency, X-linked adrenoleukodystrophy (X-ALD), mucopolysaccharidoses type 1 (MPS-1), Pompe disease, spinal muscular atrophy, or such other inherited or congenital infant or childhood-onset diseases as the department may from time to time specify shall be the responsibility of the child's parent, guardian, or custodian with the aid of a physician selected by such person.

(9) Except for acts of gross negligence or willful or wanton conduct, any physician, hospital or other birthing facility, laboratory, or other submitter making reports or notifications under sections 71-519 to 71-524 shall be immune from criminal or civil liability of any kind or character based on any statements contained in such reports or notifications.

Source: Laws 1987, LB 385, § 1; Laws 1988, LB 1100, § 99; Laws 1996, LB 1044, § 502; Laws 1998, LB 1073, § 85; Laws 2001, LB 432, § 10; Laws 2002, LB 235, § 1; Laws 2003, LB 119, § 2; Laws 2005, LB 301, § 15; Laws 2007, LB296, § 390; Laws 2017, LB91, § 1; Laws 2020, LB755, § 32.

(m) CYTOMEGALOVIRUS

71-558 Cytomegalovirus; informational materials; department; duties.

(1) The Department of Health and Human Services shall develop and publish informational materials for women who may become pregnant, expectant parents, and parents of infants regarding:

(a) The incidence of cytomegalovirus;

(b) The transmission of cytomegalovirus to pregnant women and women who may become pregnant;

(c) Birth defects caused by congenital cytomegalovirus;

(d) Methods of diagnosing congenital cytomegalovirus;

(e) Available preventative measures to avoid the infection of women who are pregnant or who may become pregnant; and

(f) Early interventions, treatment, and services available for children diagnosed with congenital cytomegalovirus.

(2) The department shall publish such informational materials on its website and make the materials available to child care facilities, school nurses, hospitals, birthing facilities as defined in section 71-4736, and health care providers offering care to pregnant women and infants.

Source: Laws 2022, LB741, § 34.
Effective date July 21, 2022.

71-559 Health care provider; provide informational materials; when.

A health care provider offering care to pregnant women may provide the informational materials published under section 71-558 to each pregnant woman during the first trimester of pregnancy or when a pregnant woman comes under the care of a provider after the first trimester of pregnancy.

Source: Laws 2022, LB741, § 35.
Effective date July 21, 2022.

71-560 Birthing facility; newborn infant; hearing screening test; information provided.

(1) If a newborn infant fails a hearing screening test as provided in section 71-4742, the birthing facility performing such screening may provide to the parents of the newborn infant the following information:

(a) Potential birth defects caused by congenital cytomegalovirus;

(b) Testing opportunities for cytomegalovirus, including the opportunity to test for cytomegalovirus prior to the infant's discharge from the hospital or birthing facility; and

(c) Early intervention services.

(2) The informational material published under section 71-558, and such additional clarifying information as required by the parents, may be provided to the parents at the newborn infant's follow-up audiology appointment.

Source: Laws 2022, LB741, § 36.
Effective date July 21, 2022.

(n) ALZHEIMER'S DISEASE AND OTHER DEMENTIA SUPPORT ACT

71-561 Act, how cited.

Sections 71-561 to 71-567 shall be known and may be cited as the Alzheimer's Disease and Other Dementia Support Act.

Source: Laws 2022, LB752, § 30.
Effective date July 21, 2022.

71-562 Legislative findings and declarations.

The Legislature hereby finds and declares that Alzheimer's and other dementia are of significant concern to the State of Nebraska, and that the Legislature and the state would benefit from a more coordinated approach to addressing Alzheimer's disease and other dementia.

Source: Laws 2022, LB752, § 31.
Effective date July 21, 2022.

71-563 Terms, defined.

For purposes of the Alzheimer's Disease and Other Dementia Support Act:

(1) Council means the Alzheimer's Disease and Other Dementia Advisory Council; and

(2) Department means the Department of Health and Human Services.

Source: Laws 2022, LB752, § 32.
Effective date July 21, 2022.

71-564 Alzheimer's Disease and Other Dementia Advisory Council; members; duties; expenses.

(1) The Alzheimer's Disease and Other Dementia Advisory Council is created and shall include:

(a) Twelve voting members appointed by the Governor. The voting members shall consist of: (i) An individual living with Alzheimer's disease or another dementia or a family member of such an individual; (ii) an individual who is the family caregiver of an individual living with Alzheimer's disease or another dementia; (iii) an individual who represents nursing homes; (iv) an individual who represents assisted-living facilities; (v) an individual who represents providers of adult day care services; (vi) an individual who represents home care providers; (vii) a medical professional who has experience diagnosing and treating Alzheimer's disease; (viii) an individual who conducts research regarding Alzheimer's disease or other dementia; (ix) an individual who represents a leading, nationwide organization that advocates on behalf of individuals living with Alzheimer's disease or other dementia; (x) an individual who represents an area agency on aging; (xi) an individual representing an organization that advocates for older adults; and (xii) an individual with experience or expertise in the area of the specific needs of individuals with intellectual and developmental disabilities and Alzheimer's disease or other dementia; and

(b) Five nonvoting members. The nonvoting members shall consist of: (i) The Director of Public Health or the director's designee; (ii) the Director of Medicaid and Long-Term Care or the director's designee; (iii) a representative of the State Unit on Aging of the Division of Medicaid and Long-Term Care designated by the Director of Medicaid and Long-Term Care; (iv) a representative of the Nebraska Workforce Development Board designated by the board; and (v) the state long-term care ombudsman or the ombudsman's designee.

(2) The Governor shall make the appointments within ninety days after July 21, 2022. Vacancies shall be filled in the same manner as the original appointments.

(3) The voting members of the council shall serve for a term of four years. A voting member may be reappointed to one additional term of four years.

(4) Members of the council shall select the chairperson and vice-chairperson who shall not be employees of the state and may serve in such role for up to four consecutive years. The Director of Public Health or the director's designee shall call and preside over the first meeting until a chairperson is selected. Thereafter, the council shall meet at least quarterly at the call of the chairperson. A majority of the voting members shall constitute a quorum for the conduct of meetings.

(5) The council shall hold its first meeting not later than thirty days after the appointment of its members and shall hold subsequent meetings at least once every calendar quarter.

(6) Members shall serve on the council without compensation but shall be compensated for expenses incurred for such service.

(7) The department shall provide staff and support to the council as necessary to assist the council in the performance of its duties.

Source: Laws 2022, LB752, § 33.
Effective date July 21, 2022.

71-565 Council; purpose; collaboration.

(1) The purpose of the council shall be to examine (a) the needs of individuals living with Alzheimer's disease or other dementia, (b) the services available in the state for those individuals and their family caregivers, and (c) the ability of health care providers and facilities to meet the current and future needs of such individuals.

(2) The council shall collaborate with the department and other state departments as needed to gather input on issues and strategies that pertain to Alzheimer's disease and other dementia and identify proactive approaches on public health, workforce, caregiver support, and care delivery. The council shall monitor analysis, policy development, and program implementation related to Alzheimer's disease and other dementia.

Source: Laws 2022, LB752, § 34.
Effective date July 21, 2022.

71-566 Council; considerations; findings and recommendations.

The council shall consider and make findings and recommendations on the following topics:

(1) Trends in the state's Alzheimer's disease and other dementia populations and service needs, including:

(a) The state's role in providing or facilitating long-term care, family caregiver support, and assistance to those with early-stage or early-onset Alzheimer's disease or other dementia;

(b) The state's policies regarding individuals with Alzheimer's disease or other dementia;

(c) The fiscal impact of Alzheimer's disease and other dementia on publicly funded health care programs; and

(d) The establishment of a surveillance system to better determine the number of individuals diagnosed with Alzheimer's disease or other dementia and to monitor changes to such numbers;

(2) Existing resources, services, and capacity relating to the diagnosis and care of individuals living with Alzheimer's disease or other dementia, including:

(a) The type, cost, and availability of dementia care services;

(b) The availability of health care workers who can serve people with dementia, including, but not limited to, neurologists, geriatricians, and direct care workers;

(c) Dementia-specific training requirements for public and private employees who interact with people living with Alzheimer's disease or other dementia which shall include, but not be limited to, long-term care workers, case managers, adult protective services, law enforcement, and first responders;

(d) Home and community-based services, including respite care for individuals exhibiting symptoms of Alzheimer's disease or other dementia and their families;

(e) Quality care measures for home and community-based services and residential care facilities; and

(f) State-supported Alzheimer's disease and other dementia research conducted at universities located in this state; and

(3) Policies and strategies that address the following:

(a) Increasing public awareness of Alzheimer's disease and other dementia;

(b) Educating providers to increase early detection and diagnosis of Alzheimer's disease and other dementia;

(c) Improving the health care received by individuals diagnosed with Alzheimer's disease or other dementia;

(d) Evaluating the capacity of the health care system in meeting the growing number and needs of those with Alzheimer's disease and other dementia;

(e) Increasing the number of health care professionals necessary to treat the growing aging and Alzheimer's disease and dementia populations;

(f) Improving services provided in the home and community to delay and decrease the need for institutionalized care for individuals with Alzheimer's disease or other dementia;

(g) Improving long-term care, including assisted living, for those with Alzheimer's disease or other dementia;

(h) Assisting unpaid Alzheimer's disease or dementia caregivers;

(i) Increasing and improving research on Alzheimer's disease and other dementia;

(j) Promoting activities to maintain and improve brain health;

(k) Improving the collection of data and information related to Alzheimer's disease and other dementia and the resulting public health burdens;

(l) Improving public safety and addressing the safety-related needs of those with Alzheimer's disease or other dementia;

(m) Addressing legal protections for, and legal issues faced by, individuals with Alzheimer's disease or other dementia; and

(n) Improving the ways in which the government evaluates and adopts policies to assist individuals diagnosed with Alzheimer's disease or other dementia and their families.

Source: Laws 2022, LB752, § 35.
Effective date July 21, 2022.

71-567 State Alzheimer's Plan.

(1)(a) No later than eighteen months after July 21, 2022, the council shall compile the findings and recommendations under the Alzheimer's Disease and

Other Dementia Support Act and submit them as a State Alzheimer's Plan to the Legislature and the Governor.

(b) Every four years thereafter, the council shall issue an updated State Alzheimer's Plan addressing the items in sections 71-565 and 71-566 and any other issues the council deems necessary and relevant toward addressing Alzheimer's disease and dementia in Nebraska.

(2) By October 1 of each year after the creation of the State Alzheimer's Plan, the council shall electronically submit to the Legislature and the Governor an annual report on the status of implementation of the State Alzheimer's Plan recommendations and any barriers to implementation.

Source: Laws 2022, LB752, § 36.
Effective date July 21, 2022.

ARTICLE 6
VITAL STATISTICS

Section

71-601 Act, how cited.

Sections 71-601 to 71-649 shall be known and may be cited as the Vital Statistics Act.

Source: Laws 2005, LB 301, § 21; Laws 2018, LB1040, § 1; Laws 2020, LB966, § 17.

71-604.02 Acknowledgment of maternity; biological mother not the birth mother; forms; effect on birth certificate; rebuttable presumption; spouse; paternity; affidavits; department; powers and duties.

(1) For purposes of this section:

(a) Biological mother means a person who is related to a child as the source of the egg that resulted in the conception of the child; and

(b) Birth mother means the person who gave birth to the child.

(2) During the period immediately before or after the in-hospital birth of a child whose biological mother is not the same as the birth mother, the person in charge of such hospital or such person's designated representative shall provide to the child's biological mother and birth mother the documents and written instructions for such biological mother and birth mother to complete a notarized acknowledgment of maternity. Such acknowledgment, if signed by both parties and notarized, shall be filed with the department at the same time at which the certificate of live birth is filed.

(3) Nothing in this section shall be deemed to require the person in charge of such hospital or such person's designee to seek out or otherwise locate an alleged mother who is not readily identifiable or available.

(4) The acknowledgment shall be executed on a form prepared by the department. Such form shall be in essentially the same form provided by the department. The acknowledgment shall include, but not be limited to, (a) a statement by the birth mother consenting to the acknowledgment of maternity and a statement that the biological mother is the legal mother of the child, (b) a statement by the biological mother that she is the biological mother of the child, (c) written information regarding parental rights and responsibilities, and (d) the social security numbers of the mothers.

(5) The form provided for in subsection (4) of this section shall also contain instructions for completion and filing with the department if it is not completed and filed with a birth certificate as provided in subsection (2) of this section.

(6) The department shall accept completed acknowledgment forms. The department may prepare photographic, electronic, or other reproductions of acknowledgments. Such reproductions, when certified and approved by the department, shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by rules and regulations of the department.

(7) The department shall enter on the birth certificate of any child described in subsection (2) of this section the name of the biological mother of the child upon receipt of an acknowledgment of maternity as provided in this section signed by the biological mother of the child and the birth mother of the child. The name of the birth mother shall not be entered on the birth certificate. If the birth mother is married, the name of the birth mother's spouse shall not be entered on the birth certificate unless paternity for such spouse is otherwise established by law.

(8)(a) The signing of a notarized acknowledgment of maternity, whether under this section or otherwise, by the biological mother shall create a rebuttable presumption of maternity as against the biological mother. The signed, notarized acknowledgment is subject to the right of any signatory to rescind the acknowledgment at any time prior to the earlier of:

(i) Sixty days after the acknowledgment; or

(ii) The date of an administrative or judicial proceeding relating to the child, including a proceeding to establish a support order in which the signatory is a party.

(b) After the rescission period provided for in subdivision (8)(a) of this section, a signed, notarized acknowledgment is considered a legal finding which may be challenged only on the basis of fraud, duress, or material mistake of fact with the burden of proof upon the challenger, and the legal responsibilities, including the child support obligation, of any signatory arising from the acknowledgment shall not be suspended during the challenge, except for good cause shown. Such a signed and notarized acknowledgment or a certified copy or certified reproduction thereof shall be admissible in evidence in any proceeding to establish support.

(9)(a) If the biological mother was married at the time of either conception or birth or at any time between conception and birth of a child described in subsection (2) of this section, the name of the biological mother's spouse shall be entered on the certificate as the other parent of the child unless:

(i) Paternity has been determined otherwise by a court of competent jurisdiction;

(ii) The biological mother and the biological mother's spouse execute affidavits attesting that the biological mother's spouse is not the biological parent of the child, in which case information about the other parent shall be omitted from the certificate; or

(iii) The biological mother executes an affidavit attesting that her spouse is not the biological father and naming the biological father; the biological father executes an affidavit attesting that he is the biological father; and the biological mother's spouse executes an affidavit attesting that such spouse is not the biological parent of the child. In such case the biological father shall be shown as the other parent on the certificate.

(b) For affidavits executed under subdivision (8)(a)(ii) or (iii) of this section, each signature shall be individually notarized.

(10) If the biological mother was not married at the time of either conception or birth or at any time between conception and birth, the name of the biological father shall not be entered on the certificate as the other parent without the written consent of the biological mother and the person named as the biological father.

(11) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the adjudicated father shall be entered on the certificate as the other parent in accordance with the finding of the court.

(12) If the other parent is not named on the certificate, no other information about the other parent shall be entered thereon.

(13) The identification of the father as provided in this section shall not be deemed to affect the legitimacy of the child or the duty to support as set forth in sections 42-377 and 43-1401 to 43-1418.

(14) The department may adopt and promulgate rules and regulations as necessary and proper to assist it in the implementation and administration of this section and to establish a nominal payment and procedure for payment for each acknowledgment filed with the department.

Source: Laws 2020, LB966, § 18.

71-605 Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements.

(1) The funeral director and embalmer in charge of the funeral of any person dying in the State of Nebraska shall cause a certificate of death to be filled out with all the particulars contained in the standard form adopted and promulgated by the department. Such standard form shall include a space for veteran status and the period of service in the armed forces of the United States and a statement of the cause of death made by a person holding a valid license as a physician, physician assistant, or nurse practitioner who last attended the deceased. The standard form shall also include the deceased's social security number and a notice that, pursuant to section 30-2413, demands for notice which may affect the estate of the deceased are filed with the county court in the county where the decedent resided at the time of death. Death and fetal death certificates shall be completed by the funeral directors and embalmers and physicians, physician assistants, or nurse practitioners for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician, physician assistant, or nurse practitioner shall have the responsibility and duty to complete and sign by electronic means pursuant to section 71-603.01, within twenty-four hours from the time of death, that part of the certificate of death entitled medical certificate of death. In the case of a death when no person licensed as a physician, physician assistant, or nurse practitioner was in attendance, the funeral director and embalmer shall refer the case to the county attorney who shall have the responsibility and duty to complete and sign the death certificate by electronic means pursuant to section 71-603.01.

No cause of death shall be certified in the case of the sudden and unexpected death of a child between the ages of one week and three years until an autopsy is performed at county expense by a qualified pathologist pursuant to section 23-1824. The parents or guardian shall be notified of the results of the autopsy by their physician, physician assistant, nurse practitioner, community health official, or county coroner within forty-eight hours. The term sudden infant death syndrome shall be entered on the death certificate as the principal cause of death when the term is appropriately descriptive of the pathology findings and circumstances surrounding the death of a child.

If the circumstances show it possible that death was caused by neglect, violence, or any unlawful means, the case shall be referred to the county attorney for investigation and certification. The county attorney shall, within twenty-four hours after taking charge of the case, state the cause of death as ascertained, giving as far as possible the means or instrument which produced the death. All death certificates shall show clearly the cause, disease, or sequence of causes ending in death. If the cause of death cannot be determined within the period of time stated above, the death certificate shall be filed to establish the fact of death. As soon as possible thereafter, and not more than six weeks later, supplemental information as to the cause, disease, or sequence of causes ending in death shall be filed with the department to complete the record. For all certificates stated in terms that are indefinite, insufficient, or unsatisfactory for classification, inquiry shall be made to the person completing the certificate to secure the necessary information to correct or complete the record.

(3) A completed death certificate shall be filed with the department within five business days after the date of death. If it is impossible to complete the certificate of death within five business days, the funeral director and embalmer shall notify the department of the reason for the delay and file the certificate as soon as possible.

(4) Before any dead human body may be cremated, a cremation permit shall first be signed electronically by the county attorney, or by his or her authorized representative as designated by the county attorney in writing, of the county in which the death occurred on an electronic form prescribed and furnished by the department.

(5) A permit for disinterment shall be required prior to disinterment of a dead human body. The permit shall be issued by the department to a licensed funeral director and embalmer upon proper application. The request for disinterment shall be made by the person listed in section 30-2223 or a county attorney on a form furnished by the department. The application shall be signed by the funeral director and embalmer who will be directly supervising the disinterment. When the disinterment occurs, the funeral director and embalmer shall

sign the permit giving the date of disinterment and file the permit with the department within ten days of the disinterment.

(6) When a request is made under subsection (5) of this section for the disinterment of more than one dead human body, an order from a court of competent jurisdiction shall be submitted to the department prior to the issuance of a permit for disinterment. The order shall include, but not be limited to, the number of bodies to be disinterred if that number can be ascertained, the method and details of transportation of the disinterred bodies, the place of reinterment, and the reason for disinterment. No sexton or other person in charge of a cemetery shall allow the disinterment of a body without first receiving from the department a disinterment permit properly completed.

(7) No dead human body shall be removed from the state for final disposition without a transit permit issued by the funeral director and embalmer having charge of the body in Nebraska, except that when the death is subject to investigation, the transit permit shall not be issued by the funeral director and embalmer without authorization of the county attorney of the county in which the death occurred. No agent of any transportation company shall allow the shipment of any body without the properly completed transit permit prepared in duplicate.

(8) The interment, disinterment, or reinterment of a dead human body shall be performed under the direct supervision of a licensed funeral director and embalmer, except that hospital disposition may be made of the remains of a child born dead pursuant to section 71-20,121.

(9) All transit permits issued in accordance with the law of the place where the death occurred in a state other than Nebraska shall be signed by the funeral director and embalmer in charge of burial and forwarded to the department within five business days after the interment takes place.

(10) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 24, 2017.

Source: Laws 1921, c. 253, § 2, p. 863; C.S.1922, § 8233; Laws 1927, c. 166, § 3, p. 449; C.S.1929, § 71-2405; R.S.1943, § 71-605; Laws 1949, c. 202, § 1, p. 585; Laws 1953, c. 241, § 1, p. 830; Laws 1961, c. 341, § 3, p. 1091; Laws 1965, c. 418, § 3, p. 1335; Laws 1973, LB 29, § 1; Laws 1978, LB 605, § 1; Laws 1985, LB 42, § 3; Laws 1989, LB 344, § 10; Laws 1993, LB 187, § 8; Laws 1996, LB 1044, § 517; Laws 1997, LB 307, § 137; Laws 1997, LB 752, § 172; Laws 1999, LB 46, § 4; Laws 2003, LB 95, § 33; Laws 2005, LB 54, § 14; Laws 2005, LB 301, § 25; Laws 2007, LB463, § 1184; Laws 2009, LB195, § 68; Laws 2012, LB1042, § 4; Laws 2014, LB998, § 14; Laws 2016, LB786, § 1; Laws 2017, LB268, § 15; Laws 2019, LB593, § 9.

Cross References

For authority of chiropractors to sign death certificates, see section 38-811.
For authority of physician assistants to sign death certificates, see section 38-2047.
Organ and tissue donation, notation required, see section 71-4816.

71-609 Repealed. Laws 2022, LB704, § 4.

71-614 Marriage licenses; amendment; department; county clerk; duties.

As soon as possible after completion of an amendment to a marriage license by the department, the department shall forward a noncertified copy of the

marriage license reflecting the amendment to the county clerk of the county in which the license was filed. Upon receipt of the amended copy, the county clerk shall make the necessary changes on the marriage license on file in his or her office to reflect the amendment.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 16, p. 784; C.S.1922, § 8246; Laws 1927, c. 166, § 10, p. 452; C.S.1929, § 71-2418; R.S.1943, § 71-614; Laws 1959, c. 323, § 2, p. 1180; Laws 1967, c. 443, § 1, p. 1383; Laws 1967, c. 444, § 1, p. 1385; Laws 1977, LB 73, § 1; Laws 1986, LB 525, § 13; Laws 1992, LB 1019, § 53; Laws 1996, LB 1044, § 525; Laws 1997, LB 307, § 141; Laws 2007, LB296, § 414; Laws 2021, LB93, § 1.

ARTICLE 7

WOMEN'S HEALTH

Section
71-702. Women's Health Initiative Advisory Council; created; members; terms; duties; expenses.

71-702 Women's Health Initiative Advisory Council; created; members; terms; duties; expenses.

(1) The Women's Health Initiative Advisory Council is created and shall consist of not more than thirty members, at least three-fourths of whom are women. At least one member shall be appointed from the following disciplines: (a) An obstetrician/gynecologist; (b) a nurse practitioner or physician's assistant from a rural community; (c) a geriatrics physician or nurse; (d) a pediatrician; (e) a community public health representative from each congressional district; (f) a health educator; (g) an insurance industry representative; (h) a mental health professional; (i) a representative from a statewide health volunteer agency; (j) a private health care industry representative; (k) an epidemiologist or a health statistician; (l) a foundation representative; and (m) a woman who is a health care consumer from each of the following age categories: Eighteen to thirty; thirty-one to forty; forty-one to sixty-five; and sixty-six and older. The membership shall also include a representative of the University of Nebraska Medical Center, a representative from Creighton University Medical Center, the chief medical officer if one is appointed under section 81-3115, and the Title V Administrator of the Department of Health and Human Services.

(2) The Governor shall appoint advisory council members and shall consider and attempt to balance representation based on political party affiliation, race, and different geographical areas of Nebraska when making appointments. The Governor shall appoint the first chairperson and vice-chairperson of the advisory council. There shall be two ex officio, nonvoting members from the Legislature, one of which shall be the chairperson of the Health and Human Services Committee.

(3) The terms of the initial members shall be as follows: One-third shall serve for one-year terms, one-third shall serve for two-year terms, and one-third shall serve for three-year terms including the members designated chairperson and vice-chairperson. Thereafter members shall serve for three-year terms. Members may not serve more than two consecutive three-year terms.

(4) The Governor shall make the appointments within three months after July 13, 2000.

(5) The advisory council shall meet quarterly the first two years. After this time the advisory council shall meet at least every six months or upon the call of the chairperson or a majority of the voting members. A quorum shall be one-half of the voting members.

(6) The members of the advisory council shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177 and pursuant to policies of the advisory council. Funds for reimbursement for expenses shall be from the Women's Health Initiative Fund.

(7) The advisory council shall advise the Women's Health Initiative of Nebraska in carrying out its duties under section 71-701 and may solicit private funds to support the initiative.

Source: Laws 2000, LB 480, § 2; Laws 2004, LB 818, § 1; Laws 2007, LB296, § 449; Laws 2009, LB84, § 1; Laws 2009, LB154, § 16; Laws 2020, LB381, § 60.

ARTICLE 8

BEHAVIORAL HEALTH SERVICES

Section
71-801. Nebraska Behavioral Health Services Act; act, how cited.
71-808. Regional behavioral health authority; established; regional governing board; matching funds; requirements.
71-812. Behavioral Health Services Fund; created; use; investment.
71-829. Legislative findings and declarations.
71-830. Behavioral Health Education Center; created; administration; duties; report.
71-831. Transferred to section 68-995.

71-801 Nebraska Behavioral Health Services Act; act, how cited.

Sections 71-801 to 71-830 shall be known and may be cited as the Nebraska Behavioral Health Services Act.

Source: Laws 2004, LB 1083, § 1; Laws 2006, LB 994, § 91; Laws 2009, LB154, § 17; Laws 2009, LB603, § 3; Laws 2012, LB1158, § 3; Laws 2020, LB1158, § 5.

71-808 Regional behavioral health authority; established; regional governing board; matching funds; requirements.

(1) A regional behavioral health authority shall be established in each behavioral health region by counties acting under provisions of the Interlocal Cooperation Act. Each regional behavioral health authority shall be governed by a regional governing board consisting of one county board member from each county in the region. Board members shall serve for staggered terms of three years and until their successors are appointed and qualified. Board members shall serve without compensation but shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(2) The regional governing board shall appoint a regional administrator who shall be responsible for the administration and management of the regional behavioral health authority. Each regional behavioral health authority shall encourage and facilitate the involvement of consumers in all aspects of service planning and delivery within the region and shall coordinate such activities with the office of consumer affairs within the division. Each regional behavioral health authority shall establish and utilize a regional advisory committee

consisting of consumers, providers, and other interested parties and may establish and utilize such other task forces, subcommittees, or other committees as it deems necessary and appropriate to carry out its duties under this section.

(3) Each county in a behavioral health region shall provide funding for the operation of the behavioral health authority and for the provision of behavioral health services in the region. The total amount of funding provided by counties under this subsection shall be equal to one dollar for every three dollars from the General Fund. The division shall annually certify the total amount of county matching funds to be provided. At least forty percent of such amount shall consist of local and county tax revenue, and the remainder shall consist of other nonfederal sources. The regional governing board of each behavioral health authority, in consultation with all counties in the region, shall determine the amount of funding to be provided by each county under this subsection. For purposes of calculating the amount of county matching funds under this subsection, the amount of General Funds shall exclude:

(a) An amount equal to two million five hundred ninety-nine thousand six hundred sixty dollars from the General Fund each year, beginning on July 1, 2021;

(b) Any General Funds transferred from regional centers for the provision of community-based behavioral health services after July 1, 2004; and

(c) Funds received by a regional behavioral health authority for the provision of behavioral health services to children under section 71-826.

Source: Laws 2004, LB 1083, § 8; Laws 2009, LB603, § 4; Laws 2020, LB381, § 61; Laws 2021, LB384, § 10.

Cross References

Interlocal Cooperation Act, see section 13-801.

71-812 Behavioral Health Services Fund; created; use; investment.

(1) The Behavioral Health Services Fund is created. The fund shall be administered by the division and shall contain cash funds appropriated by the Legislature or otherwise received by the department for the provision of behavioral health services from any other public or private source and directed by the Legislature for credit to the fund.

(2) The fund shall be used to encourage and facilitate the statewide development and provision of community-based behavioral health services, including, but not limited to, (a) the provision of grants, loans, and other assistance for such purpose and (b) reimbursement to providers of such services.

(3)(a) Money transferred to the fund under section 76-903 shall be used for housing-related assistance for very low-income adults with serious mental illness, except that if the division determines that all housing-related assistance obligations under this subsection have been fully satisfied, the division may distribute any excess, up to twenty percent of such money, to regional behavioral health authorities for acquisition or rehabilitation of housing to assist such persons. The division shall manage and distribute such funds based upon a formula established by the division, in consultation with regional behavioral health authorities and the department, in a manner consistent with and reasonably calculated to promote the purposes of the public behavioral health system enumerated in section 71-803. The division shall contract with each regional behavioral health authority for the provision of such assistance. Each

regional behavioral health authority may contract with qualifying public, private, or nonprofit entities for the provision of such assistance.

(b) For purposes of this subsection:

(i) Adult with serious mental illness means a person eighteen years of age or older who has, or at any time during the immediately preceding twelve months has had, a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and which has resulted in functional impairment that substantially interferes with or limits one or more major life functions. Serious mental illness does not include DSM V codes, substance abuse disorders, or developmental disabilities unless such conditions exist concurrently with a diagnosable serious mental illness;

(ii) Housing-related assistance includes rental payments, utility payments, security and utility deposits, landlord risk mitigation payments, and other related costs and payments;

(iii) Landlord risk mitigation payment means a payment provided to a landlord who leases or rents property to a very low-income adult with serious mental illness which may be used to pay for excessive damage to the rental property, any lost rent, any legal fees incurred by the landlord in excess of the security deposit, or any other expenses incurred by the landlord as a result of leasing or renting the property to such individual; and

(iv) Very low-income means a household income of fifty percent or less of the applicable median family income estimate as established by the United States Department of Housing and Urban Development.

(4) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2004, LB 1083, § 12; Laws 2005, LB 40, § 5; Laws 2007, LB296, § 459; Laws 2021, LB384, § 11.

Cross References

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

71-829 Legislative findings and declarations.

The Legislature hereby finds and declares that:

(1) Ninety-five percent of counties in Nebraska are classified as behavioral health profession shortage areas by the federal Health Resources and Services Administration and the Nebraska Department of Health and Human Services;

(2) There are severe behavioral health workforce shortages in rural and underserved areas of the state which negatively impact access to appropriate behavioral health services for Nebraska residents; and

(3) Nebraska must act to address immediate needs and implement long-term strategies to alleviate education, recruitment, and retention challenges in the behavioral health field.

Source: Laws 2009, LB603, § 13; Laws 2022, LB1068, § 1.
Effective date April 19, 2022.

71-830 Behavioral Health Education Center; created; administration; duties; report.

(1) The Behavioral Health Education Center is created and shall be administered by the University of Nebraska Medical Center.

(2) The center shall:

(a)(i) Provide funds for up to ten additional medical residents, physician assistants, or psychiatric nurse practitioners in a Nebraska-based psychiatry program each year. The center shall provide psychiatric training experiences that serve rural Nebraska and other underserved areas. As part of the training experience, each center-funded resident, physician assistant, or psychiatric nurse practitioner shall participate in the rural training for a minimum of three months. A minimum of three of the ten center-funded residents, physician assistants, or psychiatric nurse practitioners shall be active in the rural training each year;

(ii) Provide funds for up to twelve one-year doctoral-level psychology internships in Nebraska. The interns shall be placed in communities so as to increase access to behavioral health services for patients residing in rural and underserved areas of Nebraska; and

(iii) Provide funds for up to ten one-year mental health therapist internships or practicums in Nebraska. The trainees shall be placed in rural and underserved communities in order to increase access to behavioral health services for patients residing in such areas of Nebraska;

(b) Focus on the training of behavioral health professionals in telehealth techniques, including taking advantage of a telehealth network that exists, and other innovative means of care delivery in order to increase access to behavioral health services for all Nebraskans;

(c) Analyze the geographic and demographic availability of Nebraska behavioral health professionals, including psychiatrists, social workers, community rehabilitation workers, psychologists, substance abuse counselors, licensed mental health practitioners, behavioral analysts, peer support providers, primary care physicians, nurses, nurse practitioners, pharmacists, and physician assistants;

(d) Prioritize the need for additional professionals by type and location;

(e) Establish learning collaborative partnerships with other higher education institutions in the state, hospitals, law enforcement, community-based agencies, school districts, and consumers and their families in order to develop evidence-based, recovery-focused, interdisciplinary curricula and training for behavioral health professionals delivering behavioral health services in community-based agencies, hospitals, and law enforcement. Development and dissemination of such curricula and training shall address the identified priority needs for behavioral health professionals;

(f) Establish and operate six interdisciplinary behavioral health training sites. Four of the six sites shall be in counties with a population of fewer than fifty thousand inhabitants. Each site shall provide annual interdisciplinary training opportunities for a minimum of six behavioral health professionals; and

(g) Educate behavioral health providers and facilities to integrate behavioral health care into primary care practice and licensed health care facilities in order to place well-trained behavioral health providers into primary care

practices, behavioral health practices, and rural hospitals for the purpose of increasing access to behavioral health services.

(3) No later than December 1 of every odd-numbered year, the center shall prepare a report of its activities under the Behavioral Health Workforce Act. The report shall be filed electronically with the Clerk of the Legislature and shall be provided electronically to any member of the Legislature upon request.

Source: Laws 2009, LB603, § 14; Laws 2012, LB782, § 109; Laws 2014, LB901, § 1; Laws 2022, LB1068, § 2.
Effective date April 19, 2022.

71-831 Transferred to section 68-995.

ARTICLE 10

STATE ANATOMICAL BOARD, DISPOSAL OF DEAD BODIES

Section
71-1001. State Anatomical Board; members; powers and duties; State Anatomical Board Cash Fund; created; use; investment.
71-1002. Repealed. Laws 2019, LB559, § 6.
71-1003. Board; dead human bodies; distribution.
71-1004. Board; dead human bodies; transportation.
71-1005. Repealed. Laws 2019, LB559, § 6.
71-1006. Repealed. Laws 2019, LB559, § 6.
71-1007. Board; purpose.

71-1001 State Anatomical Board; members; powers and duties; State Anatomical Board Cash Fund; created; use; investment.

(1) The heads of the anatomy departments of the medical schools and colleges of this state, one professor of anatomy appointed by the head of the anatomy department from each medical school or college of this state, one professor of anatomy appointed from each dental school or college of this state, and one layperson appointed by the Department of Health and Human Services shall constitute the State Anatomical Board of the State of Nebraska for the distribution, delivery, and use of certain dead human bodies, described in section 71-4834, to and among such schools, colleges, and persons as are entitled thereto under such section.

(2) The board shall have power to (a) establish rules and regulations for its government and for the collection, storage, and distribution of dead human bodies for anatomical purposes and (b) appoint and remove its officers and agents.

(3) The board shall keep minutes of its meetings and shall cause a record to be kept of all of its transactions, of bodies received and distributed by it, and of the school, college, or person receiving every such body. The records of the board shall be open at all times to the inspection of each member of the board and to every county attorney within this state.

(4) There is hereby created the State Anatomical Board Cash Fund. The fund shall be under the University of Nebraska Medical Center for accounting and budgeting purposes only. The fund shall consist of revenue collected by the State Anatomical Board and shall only be used to pay for costs of operating the board. Any money in the fund available for investment shall be invested by the

state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1929, c. 158, § 1, p. 551; C.S.1929, § 71-2801; R.S.1943, § 71-1001; Laws 1969, c. 570, § 1, p. 2314; Laws 1978, LB 583, § 1; Laws 1979, LB 98, § 2; Laws 1992, LB 860, § 2; Laws 1996, LB 1044, § 556; Laws 2007, LB296, § 464; Laws 2017, LB331, § 36; Laws 2019, LB559, § 1.

Cross References

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

71-1002 Repealed. Laws 2019, LB559, § 6.

71-1003 Board; dead human bodies; distribution.

The State Anatomical Board, or its duly authorized officers or agents, may take and receive dead bodies as provided in section 71-4834. The board shall distribute the bodies among the medical, chiropractic, osteopathic, and dental schools and colleges, and physicians and surgeons designated by the board, under such rules and regulations as may be adopted and promulgated by it. The number of bodies so distributed to such schools and colleges shall be in proportion to the number of students matriculated in the first-year work of such schools and colleges. If there are more bodies than are required by such schools and colleges, the board, or its duly authorized officers, may, from time to time, designate physicians and surgeons to receive such bodies, and the number of bodies they may receive, if such physicians and surgeons have complied with all rules and regulations which the board may adopt and promulgate for such disposition. All expenses incurred by the board in receiving, caring for, and delivering any such body shall be paid by those receiving such body.

Source: Laws 1929, c. 158, § 3, p. 552; C.S.1929, § 71-2803; R.S.1943, § 71-1003; Laws 1971, LB 268, § 2; Laws 2019, LB559, § 2.

Cross References

Board of Funeral Directing and Embalming, distribution to and use by, see section 38-1417.

71-1004 Board; dead human bodies; transportation.

The State Anatomical Board may employ a carrier or carriers for the transportation of bodies, referred to in sections 71-1001 to 71-1007, and may transport such bodies, or order them to be transported, under such rules and regulations as it may adopt and promulgate.

Source: Laws 1929, c. 158, § 4, p. 553; C.S.1929, § 71-2804; R.S.1943, § 71-1004; Laws 2019, LB559, § 3.

71-1005 Repealed. Laws 2019, LB559, § 6.

71-1006 Repealed. Laws 2019, LB559, § 6.

71-1007 Board; purpose.

The purpose of the State Anatomical Board is to:

(1) Provide for the orderly receipt, maintenance, distribution, and use of human bodies used for medical education and research;

(2) Ensure that proper and considerate care is given to human bodies used for medical education and research; and

(3) Ensure that an orderly and equitable procedure is used for the allocation of human bodies to colleges and universities in Nebraska which provide medical education and research.

Source: Laws 1979, LB 98, § 1; Laws 2019, LB559, § 4.

ARTICLE 15
HOUSING

(e) NEBRASKA HOUSING AGENCY ACT

(e) NEBRASKA HOUSING AGENCY ACT

71-1599 Commissioners; vacancies.

All vacancies shall be filled for the unexpired terms. A vacancy shall be filled not later than six months after the date of such vacancy by the same authority and in the same manner as the previous commissioner whose position has become vacant was appointed.

Source: Laws 1999, LB 105, § 28; Laws 2020, LB1003, § 185.

ARTICLE 17
NURSES

(h) NEBRASKA CENTER FOR NURSING ACT

(h) NEBRASKA CENTER FOR NURSING ACT

71-1799 Nebraska Center for Nursing Board; created; members; terms; powers and duties; expenses.

(1) The Nebraska Center for Nursing Board is created. The board shall be a policy-setting board for the Nebraska Center for Nursing. The board shall be appointed by the Governor as follows:

(a) Ten members, at least three of whom shall be registered nurses, one of whom shall be a licensed practical nurse, one of whom shall be a representative of the hospital industry, and one of whom shall be a representative of the long-term care industry;

(b) One nurse educator recommended by the Board of Regents of the University of Nebraska;

(c) One nurse educator recommended by the Nebraska Community College Association;

(d) One nurse educator recommended by the Nebraska Association of Independent Colleges and Universities; and

(e) Three members recommended by the State Board of Health.

(2) The initial terms of the members of the Nebraska Center for Nursing Board shall be:

(a) Five of the ten members appointed under subdivision (1)(a) of this section shall serve for one year and five shall serve for two years;

(b) The member recommended by the Board of Regents shall serve for three years;

(c) The member recommended by the Nebraska Community College Association shall serve for two years;

(d) The member recommended by the Nebraska Association of Independent Colleges and Universities shall serve for one year; and

(e) The members recommended by the State Board of Health shall serve for three years.

The initial appointments shall be made within sixty days after July 13, 2000. After the initial terms expire, the terms of all of the members shall be three years with no member serving more than two consecutive terms.

(3) The Nebraska Center for Nursing Board shall have the following powers and duties:

(a) To determine operational policy;

(b) To elect a chairperson and officers to serve two-year terms. The chairperson and officers may not succeed themselves;

(c) To establish committees of the board as needed;

(d) To appoint a multidisciplinary advisory council for input and advice on policy matters;

(e) To implement the major functions of the Nebraska Center for Nursing; and

(f) To seek and accept nonstate funds for carrying out center policy.

(4) The board members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(5) The Department of Health and Human Services shall provide administrative support for the board. The board may contract for additional support not provided by the department.

Source: Laws 2000, LB 1025, § 4; Laws 2007, LB296, § 489; Laws 2020, LB381, § 62.

ARTICLE 19

CARE OF CHILDREN

(b) CHILD CARE LICENSURE

Section

(c) CHILDREN'S RESIDENTIAL FACILITIES AND PLACING LICENSURE ACT

(b) CHILD CARE LICENSURE

71-1908 Child Care Licensing Act; act, how cited; legislative findings.

(1) Sections 71-1908 to 71-1923 shall be known and may be cited as the Child Care Licensing Act.

(2) The Legislature finds that there is a present and growing need for quality child care programs and facilities. There is a need to establish and maintain licensure of persons providing such programs to ensure that such persons are competent and are using safe and adequate facilities. The Legislature further finds and declares that the development and supervision of programs are a matter of statewide concern and should be dealt with uniformly on the state and local levels. There is a need for cooperation among the various state and local agencies which impose standards on licensees, and there should be one agency which coordinates the enforcement of such standards and informs the Legislature about cooperation among the various agencies.

Source: Laws 1984, LB 130, § 1; Laws 1995, LB 401, § 29; Laws 2004, LB 1005, § 67; Laws 2013, LB105, § 1; Laws 2018, LB1034, § 60; Laws 2020, LB1185, § 2.

71-1910 Terms, defined.

For purposes of the Child Care Licensing Act, unless the context otherwise requires:

(1) Department means the Department of Health and Human Services; and

(2)(a) Program means the provision of services in lieu of parental supervision for children under thirteen years of age for compensation, either directly or indirectly, on the average of less than twelve hours per day, but more than two hours per week, and includes any employer-sponsored child care, family child care home, child care center, school-age child care program, school-age services pursuant to section 79-1104, or preschool or nursery school.

(b) Program does not include casual care at irregular intervals, a recreation camp as defined in section 81-15,271, a recreation facility, center, or program operated by a political or governmental subdivision pursuant to the authority provided in section 13-304, classes or services provided by a religious organization other than child care or a preschool or nursery school, a preschool program conducted in a school approved pursuant to section 79-318, services provided only to school-age children during the summer and other extended breaks in the school year, or foster care as defined in section 71-1901.

Source: Laws 1984, LB 130, § 3; Laws 1986, LB 68, § 1; Laws 1987, LB 472, § 1; Laws 1991, LB 836, § 29; Laws 1995, LB 401, § 31; Laws 1995, LB 451, § 9; Laws 1996, LB 900, § 1058; Laws 1996, LB 1044, § 588; Laws 1997, LB 307, § 176; Laws 1997, LB 310,

§ 5; Laws 1999, LB 594, § 51; Laws 2004, LB 1005, § 69; Laws 2006, LB 994, § 97; Laws 2007, LB296, § 499; Laws 2008, LB928, § 19; Laws 2021, LB148, § 68.

71-1912 Department; investigation; inspections; national criminal history record information check; procedure; cost; background checks; person ineligible for employment; when.

(1) Before issuance of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department adopted and promulgated under the Child Care Licensing Act. The department may investigate the character of applicants and licensees, any member of the applicant's or licensee's household, and the staff and employees of programs. The department may at any time inspect or cause an inspection to be made of any place where a program is operating to determine if such program is being properly conducted.

(2) All inspections by the department shall be unannounced except for initial licensure visits and consultation visits. Initial licensure visits are announced visits necessary for a provisional license to be issued to a family child care home I, family child care home II, child care center, or school-age-only or preschool program. Consultation visits are announced visits made at the request of a licensee for the purpose of consulting with a department specialist on ways of improving the program.

(3) An unannounced inspection of any place where a program is operating shall be conducted by the department or the city, village, or county pursuant to subsection (2) of section 71-1914 at least annually for a program licensed to provide child care for fewer than thirty children and at least twice every year for a program licensed to provide child care for thirty or more children.

(4) Whenever an inspection is made, the findings shall be recorded in a report designated by the department. The public shall have access to the results of these inspections upon a written or oral request to the department. The request must include the name and address of the program. Additional unannounced inspections shall be performed as often as is necessary for the efficient and effective enforcement of the Child Care Licensing Act.

(5)(a) A person applying for a license as a child care provider or a licensed child care provider under the Child Care Licensing Act shall submit a request for a national criminal history record information check for each child care staff member, including a prospective child care staff member of the child care provider, at the applicant's or licensee's expense, as set forth in this section. Beginning on October 1, 2019, a prospective child care staff member shall submit to a national criminal history record information check (i) prior to employment, except as otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on January 1, 2019, or (ii) prior to residing in a family child care home. A child care staff member who was employed by a child care provider prior to October 1, 2019, or who resided in a family child care home prior to October 1, 2019, shall submit to a national criminal history record information check by October 1, 2021, unless the child care staff member ceases to be a child care staff member prior to such date.

(b) A child care staff member shall be required to undergo a national criminal history record information check not less than once during each five-year period. A child care staff member shall submit a complete set of his or her fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall transmit a copy of the child care staff member's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The national criminal history record information check shall include information concerning child care staff members from federal repositories of such information and repositories of such information in other states, if authorized by federal law for use by the Nebraska State Patrol. The Nebraska State Patrol shall issue a report to the department that includes the information collected from the national criminal history record information check concerning child care staff members. The department shall seek federal funds, if available, to assist child care providers and child care staff members with the costs of the fingerprinting and national criminal history record information check. If the department does not receive sufficient federal funds to assist child care providers and staff members with such costs, then the child care staff member being screened, applicant for a license, or licensee shall pay the actual cost of the fingerprinting and national criminal history record information check, except that the department may pay all or part of the cost if funding becomes available. The department and the Nebraska State Patrol may adopt and promulgate rules and regulations concerning the costs associated with the fingerprinting and the national criminal history record information check. The department may adopt and promulgate rules and regulations implementing national criminal history record information check requirements for child care providers and child care staff members.

(c) A child care staff member shall also submit to the following background checks at his or her expense not less than once during each five-year period:

(i) A search of the National Crime Information Center's National Sex Offender Registry; and

(ii) A search of the following registries, repositories, or databases in the state where the child care provider is located or where the child care staff member resides and each state where the child care provider was located or where the child care staff member resided during the preceding five years:

(A) State criminal registries or repositories;

(B) State sex offender registries or repositories; and

(C) State-based child abuse and neglect registries and databases.

(d) Any individual shall be ineligible for employment by a child care provider if such individual:

(i) Refuses to consent to the national criminal history record information check or a background check described in this subsection;

(ii) Knowingly makes a materially false statement in connection with the national criminal history record information check or a background check described in this subsection;

(iii) Is registered, or required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry; or

(iv) Has been convicted of a crime of violence, a crime of moral turpitude, or a crime of dishonesty.

(e) The department may adopt and promulgate rules and regulations for purposes of this section.

(f) A child care provider shall be ineligible for a license under the Child Care Licensing Act and shall be ineligible to participate in the child care subsidy program if the provider employs a child care staff member who is ineligible for employment under subdivisions (d) or (e) of this subsection.

(g) National criminal history record information and information from background checks described in this subsection subject to state or federal confidentiality requirements may only be used for purposes of granting a child care license or approving a child care provider for participation in the child care subsidy program.

(h) For purposes of this subsection:

(i) Child care provider means a child care program required to be licensed under the Child Care Licensing Act; and

(ii) Child care staff member means an individual who is not related to all of the children for whom child care services are provided and:

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Who is residing in a family child care home and who is eighteen years of age or older.

Source: Laws 1984, LB 130, § 5; Laws 1985, LB 447, § 38; Laws 1987, LB 386, § 5; Laws 1988, LB 1013, § 2; Laws 1995, LB 401, § 33; Laws 1997, LB 310, § 7; Laws 2004, LB 1005, § 73; Laws 2014, LB1050, § 3; Laws 2019, LB460, § 3; Laws 2020, LB1185, § 3.

71-1912.01 Child care staff member; national criminal history record information check; required, when; federal Child Care Subsidy program; eligibility to participate.

(1) For purposes of this section, child care staff member means an individual who is not related to all of the children for whom child care services are provided and:

(a) Who is employed for compensation by a child care provider not required to be licensed under the Child Care Licensing Act, including contract employees or self-employed individuals;

(b) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(c) Who is residing in a family child care home and who is eighteen years of age or older.

(2) Beginning on November 14, 2020, an individual who is not required to be licensed under the Child Care Licensing Act but seeks to participate as a provider in the federal Child Care Subsidy program shall submit a request for a national criminal history record information check for each child care staff member, including a prospective child care staff member of the child care provider, (a) prior to the child care provider being approved to participate as a

child care provider in the federal Child Care Subsidy program, except as otherwise permitted under 45 C.F.R. 98.43, as such regulation existed on January 1, 2020, or (b) prior to residing in a family child care home. A child care staff member who was a provider in the federal Child Care Subsidy program prior to November 14, 2020, or who resided in a family child care home prior to November 14, 2020, shall submit to a national criminal history record information check by October 1, 2021, unless the child care staff member ceases to be a child care staff member prior to such date. The child care staff member or the child care provider seeking to participate in the subsidy program shall pay the cost of such national criminal history record information check. A person who undergoes a national criminal history record information check to obtain a license under the Child Care Licensing Act or work as a child care staff member and is in good standing with the department shall not be required to undergo an additional national criminal history record information check to become a child care provider in the federal Child Care Subsidy program if the person has not been separated from employment from a child care provider within the state for a period of not more than one hundred eighty consecutive days.

(3) Any individual, entity, or provider shall be ineligible to participate in the federal Child Care Subsidy program if such individual, entity, or provider:

(a) Refuses to consent to the national criminal history record information check described in this section;

(b) Knowingly makes a materially false statement in connection with the national criminal history record information check described in this section;

(c) Is registered, or required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry; or

(d) Has been convicted of a crime of violence, a crime of moral turpitude, or a crime of dishonesty.

Source: Laws 2020, LB1185, § 4.

(c) CHILDREN'S RESIDENTIAL FACILITIES AND PLACING LICENSURE ACT

71-1924 Children's Residential Facilities and Placing Licensure Act; act, how cited.

Sections 71-1924 to 71-1951 shall be known and may be cited as the Children's Residential Facilities and Placing Licensure Act.

Source: Laws 2013, LB265, § 1; Laws 2019, LB460, § 4.

71-1928.01 National criminal history record information check; procedure; cost; background checks.

(1) Any individual eighteen years of age or older working in a residential child-caring agency shall be required to undergo a national criminal history record information check not less than once during each five-year period that he or she is working in such an agency. The individual shall submit a complete set of his or her fingerprints to the Nebraska State Patrol. The Nebraska State Patrol shall transmit a copy of the individual's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The national criminal history record information check shall include

information concerning the individual from federal repositories of such information and repositories of such information in other states, if authorized by federal law for use by the Nebraska State Patrol. The Nebraska State Patrol shall issue a report to the department that includes the information collected from the national criminal history record information check concerning the individual. The department shall seek federal funds, if available, to assist residential child-caring agencies and individuals working in a residential child-caring agency with the costs of the fingerprinting and national criminal history record information check. If the department does not receive sufficient federal funds to assist residential child-caring agencies and individuals working in a residential child-caring agency with such costs, then the individual being screened or the residential child-caring agency shall pay the actual cost of the fingerprinting and national criminal history record information check, except that the department may pay all or part of the cost if funding becomes available. The department and the Nebraska State Patrol may adopt and promulgate rules and regulations concerning the costs associated with the fingerprinting and the national criminal history record information check. The department may adopt and promulgate rules and regulations implementing national criminal history record information check requirements for residential child-caring agencies.

(2) An individual eighteen years of age or older working in a residential child-caring agency shall also submit to the following background checks not less than once during each five-year period: A search of the following registries, repositories, or databases in the state where the individual resides and each state where the individual resided during the preceding five years:

(a) State criminal registries or repositories;

(b) State sex offender registries or repositories; and

(c) State-based child abuse and neglect registries and databases.

Source: Laws 2019, LB460, § 5; Laws 2020, LB1185, § 5.

71-1936 Alleged violation of act; complaint; investigation; department; duties; confidentiality; immunity; report.

(1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Children's Residential Facilities and Placing Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints, including complaints of such violations received pursuant to section 28-711, and determine whether to conduct an investigation within five working days after receiving the complaint. In making such determination, the department may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify if action is taken; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

(2) A complaint submitted to the department shall be confidential. An individual submitting a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting a complaint or for disclosure of documents, records, or other information to the department.

(3) If an investigation is conducted under this section, an investigation report shall be issued within sixty days after the determination is made to conduct the investigation, except that the final investigation report may be issued within ninety days after such determination if an interim report is issued within sixty days after such determination.

Source: Laws 2013, LB265, § 13; Laws 2019, LB59, § 1.

(d) STEP UP TO QUALITY CHILD CARE ACT

71-1958 Quality scale rating; application; assignment of rating.

(1) Quality rating criteria shall be used as provided in this section to assign a quality scale rating to each applicable child care or early childhood education program if the program applies under section 71-1957 to participate in the quality rating and improvement system developed pursuant to section 71-1955.

(2) Licensure under the Child Care Licensing Act for a program which serves children from birth to kindergarten-entrance age shall be sufficient criteria to be rated at step one.

(3) Meeting criteria established by the State Department of Education for a prekindergarten service or prekindergarten program established pursuant to section 79-1104 and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(4) Meeting performance standards required by the federal government for a federal Head Start program or Early Head Start program and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(5) Accreditation by a nationally recognized accrediting body approved by the State Department of Education and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(6) A participating applicable child care or early childhood education program operating under a provisional license shall have a quality scale rating at step one even if it meets other quality rating criteria. A participating applicable child care or early childhood education program in good standing operating under a provisional license due to a change in license type may be rated above step one. If a participating applicable child care or early childhood education program is at a quality scale rating higher than step one and the program's license is placed on disciplinary limitation, probation, or suspension, such program shall have its quality scale rating changed to step one. If an applicable child care or early childhood education program's license is revoked, the program is not eligible to participate in or receive a quality scale rating under

the quality rating and improvement system until the program has an operating license which is in full force and effect.

Source: Laws 2013, LB507, § 7; Laws 2016, LB1066, § 1; Laws 2021, LB351, § 1.

Cross References

Child Care Licensing Act, see section 71-1908.

71-1962 Nebraska Early Childhood Professional Record System; creation and operation; State Department of Education; duties; develop classification system for eligible staff members; use.

(1) Not later than March 1, 2014, the State Department of Education shall create and operate the Nebraska Early Childhood Professional Record System. The system shall be designed in order to:

(a) Establish a database of Nebraska's early childhood education workforce;

(b) Verify educational degrees and professional credentials held and relevant training completed by employees of participating applicable child care and early childhood education programs; and

(c) Provide such information to the Department of Health and Human Services for use in evaluating applications to be rated at a step above step one under section 71-1959.

(2) When an applicable child care or early childhood education program participating in the quality rating and improvement system developed pursuant to section 71-1955 applies under section 71-1959 to be rated at a step above step one, the child care or early childhood education program shall report the educational degrees and professional credentials held and relevant training completed by its child care and early childhood education employees to the Nebraska Early Childhood Professional Record System for the program to be eligible for a quality scale rating above step one.

(3) Any child care or early childhood education provider residing or working in Nebraska may report his or her educational degrees and professional credentials held, relevant training completed, and work history to the Nebraska Early Childhood Professional Record System.

(4) The State Department of Education shall develop a classification system for all eligible staff members as defined in section 77-3603 who are employees of or who are self-employed individuals providing services for applicable child care and early childhood education programs listed in the Nebraska Early Childhood Professional Record System. The classification system shall be based on the eligible staff members' educational degrees and professional credentials held, relevant training completed, and work history and shall be made up of four levels, with level one being the least qualified and level four being the most qualified. The minimum qualification for an eligible staff member to be classified as level one shall be a Child Development Associate Credential or a one-year certificate or diploma in early childhood education or child development. The classification system shall be used for purposes of the tax credit granted in section 77-3605.

Source: Laws 2013, LB507, § 11; Laws 2015, LB525, § 1; Laws 2016, LB889, § 9; Laws 2020, LB266, § 1.

ARTICLE 20
HOSPITALS

(j) RECEIVERS

(k) MEDICAID PROGRAM VIOLATIONS

(j) RECEIVERS

71-2085 Appointment of receiver; conditions.

The department may petition the district court of Lancaster County or the county where the health care facility is located for appointment of a receiver for a health care facility when any of the following conditions exist:

(1) If the department determines that the health, safety, or welfare of the residents or patients is in immediate danger;

(2) The health care facility is operating without a license;

(3) The department has suspended, revoked, or refused to renew the existing license of the health care facility;

(4) The health care facility is closing, or has informed the department that it intends to close, and adequate arrangements for the relocation of the residents or patients of such health care facility have not been made at least thirty days prior to closure; or

(5) The department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, and because of the unwillingness or inability of the licensee, owner, or operator to remedy the emergency, the department believes a receiver is necessary.

Source: Laws 1983, LB 274, § 2; R.S.1943, (1990), § 71-6002; Laws 1995, LB 406, § 61; Laws 2020, LB1053, § 14.

71-2086 Appointment of receiver; procedure; temporary receiver; purpose of receivership.

(1) The department shall file the petition for the appointment of a receiver provided for in section 71-2085 in the district court of Lancaster County or the county where the health care facility is located and shall request that a receiver be appointed for the health care facility. Unless otherwise approved by the court, no person shall be appointed as a receiver for more than six health care facilities at the same time.

(2) The court shall expeditiously hold a hearing on the petition within seven days after the filing of the petition. The department shall present evidence at the hearing in support of the petition. The licensee, owner, or operator may also

present evidence, and both parties may subpoena witnesses. The court may appoint a temporary receiver for the health care facility ex parte if the department, by affidavit, states that an emergency exists which presents an imminent danger of death or physical harm to the residents or patients of the health care facility. If a temporary receiver is appointed, notice of the petition and order shall be served on the licensee, owner, operator, or administrator of the health care facility within seventy-two hours after the entry of the order. The petition and order may be served by any method specified in section 25-505.01 or the court may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. A hearing on the petition and temporary order shall be held within seventy-two hours after notice has been served unless the licensee, owner, or operator consents to a later date. After the hearing the court may terminate, continue, or modify the temporary order. If the court determines that the department did not have probable cause to submit the affidavit in support of the appointment of the temporary receiver, the court shall have the jurisdiction to determine and award compensatory damages against the state to the owner or operator. If the licensee, owner, or operator informs the court at or before the time set for hearing that the licensee, owner, or operator does not object to the petition, the court shall waive the hearing and at once appoint a receiver for the health care facility.

(3) The purpose of a receivership created under this section is to safeguard the health, safety, and continuity of care of residents and patients and to protect them from adverse health effects. A receiver shall not take any actions or assume any responsibilities inconsistent with this purpose. No person shall impede the operation of a receivership created under this section. After the appointment of a receiver, there shall be an automatic stay of any action that would interfere with the functioning of the health care facility, including, but not limited to, cancellation of insurance policies executed by the licensee, owner, or operator, termination of utility services, attachments or setoffs of resident trust funds or working capital accounts, and repossession of equipment used in the health care facility. The stay shall not apply to any licensure, certification, or injunctive action taken by the department.

Source: Laws 1983, LB 274, § 3; R.S.1943, (1990), § 71-6003; Laws 1995, LB 406, § 62; Laws 2007, LB296, § 521; Laws 2020, LB1053, § 15.

71-2087 Receiver; appointment; effect; duties.

When a receiver is appointed under section 71-2086, the licensee, owner, or operator shall be divested of possession and control of the health care facility in favor of the receiver. The appointment of the receiver shall not affect the rights of the owner or operator to defend against any claim, suit, or action against such owner or operator or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department. A receiver shall:

(1) Take such action as is reasonably necessary to protect and conserve the assets or property of which the receiver takes possession or the proceeds of any transfer of the assets or property and may use them only in the performance of the powers and duties set forth in this section and section 71-2088 or by order of the court;

(2) Apply the current revenue and current assets of the health care facility to current operating expenses and to debts incurred by the licensee, owner, or operator prior to the appointment of the receiver. The receiver may apply to the court for approval for payment of debts incurred prior to appointment if the debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the health care facility or if the payment of the debts will interfere with the purposes of the receivership. The receiver shall give priority to expenditures for current, direct resident care, including nursing care, social services, dietary services, and housekeeping;

(3) Be responsible for the payment of taxes against the health care facility which become due during the receivership, including property taxes, sales and use taxes, withholding, taxes imposed pursuant to the Federal Insurance Contributions Act, and other payroll taxes, but not including state and federal taxes which are the liability of the owner or operator;

(4) Be entitled to and take possession of all property or assets of residents or patients which are in the possession of the licensee, owner, operator, or administrator of the health care facility. The receiver shall preserve all property, assets, and records of residents or patients of which the receiver takes possession and shall provide for the prompt transfer of the property, assets, and necessary and appropriate records to the alternative placement of any transferred or discharged resident;

(5) Upon order of the court, provide for the orderly transfer of all residents or patients in the health care facility to other suitable facilities if correction of violations of federal and state laws and regulations is not possible or cannot be completed in a timely manner or there are reasonable grounds to believe the health care facility cannot be operated on a sound financial basis and in compliance with all applicable federal or state laws and regulations or make other provisions for the continued health, safety, and welfare of the residents or patients;

(6) Conduct a thorough analysis of the financial records of the health care facility within the first thirty days of the receivership, perform ongoing accountings throughout the remainder of the receivership, and provide monthly reports of the financial status of the health care facility to the court and the department; and

(7) Make monthly reports to the court and the department related to plans for continued operation or sale of the health care facility.

Source: Laws 1995, LB 406, § 63; Laws 2020, LB1053, § 16.

71-2092 Receivership; termination; procedure; failure to terminate; effect.

(1) A receivership established under section 71-2086 may be terminated by the district court which established it after a hearing upon an application for termination. The application may be filed:

(a) Jointly by the receiver and the current licensee of the health care facility which is in receivership, stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto;

(b) By the current licensee of the health care facility, alleging that termination of the receivership is merited for the reasons set forth in subdivision (a) of this subsection, but that the receiver has declined to join in the petition for termination of the receivership;

(c) By the receiver, stating that all residents or patients of the health care facility have been relocated elsewhere and that there are reasonable grounds to believe it will not be feasible to again operate the health care facility on a sound financial basis and in compliance with federal and state laws and regulations and asking that the court approve the surrender of the license of the health care facility to the department and the subsequent return of the control of the premises of the health care facility to the owner of the premises; or

(d) By the department (i) stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto or (ii) stating that there are reasonable grounds to believe that the health care facility cannot be operated in compliance with federal or state law and regulations and asking that the court order the removal of the residents or patients to appropriate alternative placements, the closure of the facility, and the license, if any, surrendered to the department or that the health care facility be sold under reasonable terms approved by the court to a new owner meeting the requirements for licensure by the department.

(2) If the receivership has not been terminated within six months after the appointment of the receiver, the court shall, after hearing, order either that the health care facility be closed after an orderly transfer of the residents or patients to appropriate alternative placements or that the health care facility be sold under reasonable terms approved by the court to a new owner meeting the requirements for licensure by the department. The closure or sale shall occur within sixty days after the court order, unless ordered otherwise, to protect the health, safety, and welfare of the residents or patients.

Source: Laws 1983, LB 274, § 4; R.S.1943, (1990), § 71-6004; Laws 1995, LB 406, § 68; Laws 2020, LB1053, § 17.

71-2093 Receivership; payment of expenses.

The health care facility for which a receiver is appointed shall be responsible for payment of the expenses of a receivership established under section 71-2086 unless the court directs otherwise. The expenses include, but are not limited to:

(1) Compensation for the receiver and any related receivership expenses approved by the court;

(2) Expenses incurred by the health care facility for the continuing care of the residents or patients of the health care facility;

(3) Expenses incurred by the health care facility for the maintenance of buildings and grounds of the health care facility; and

(4) Expenses incurred by the health care facility in the ordinary course of business, such as employees' salaries and accounts payable.

Source: Laws 1983, LB 274, § 5; R.S.1943, (1990), § 71-6005; Laws 1995, LB 406, § 69; Laws 2020, LB1053, § 18.

71-2094 Action against receiver; requirements; Attorney General; defense or representation; conditions; costs.

(1) No person shall bring an action against a receiver appointed under section 71-2086 without first securing leave of the court. The receiver and the members and officers of the receiver are liable in their individual capacity for intentional wrongdoing or gross negligence.

(2) In all other cases, the receiver is liable in the receiver's official capacity only, and any judgment rendered shall be satisfied out of the receivership assets. The receiver is not liable in the receiver's individual capacity for the expenses of the health care facility during the receivership. The receiver is an employee of the state only for the purpose of defending a claim filed against the receiver in the receiver's official capacity. If an action is brought against a receiver in the receiver's official capacity, the receiver may file a written request for counsel with the Attorney General asserting that such civil action is based in fact upon an alleged act or omission in the course and scope of the receiver's duties. The Attorney General shall thereupon appear and defend the receiver unless after investigation the Attorney General finds that the claim or demand does not arise out of an alleged act or omission occurring in the course and scope of the receiver's duties or the act or omission complained of amounted to intentional wrongdoing or gross negligence, in which case the Attorney General shall give the receiver written notice that defense of the claim or representation before the court has been rejected.

(3) A receiver against whom a claim is made, which is not rejected by the Attorney General pursuant to subsection (2) of this section, shall cooperate fully with the Attorney General in the defense of such claim. If the Attorney General determines that such receiver has not cooperated or has otherwise acted to prejudice the defense of the claim or the appearance, the Attorney General may at any time reject the defense of the claim before the court.

(4) If the Attorney General rejects the defense of a claim pursuant to subsection (2) of this section or if it is established by the judgment ultimately rendered on the claim that the act or omission complained of was not in the course or scope of the receiver's duties or amounted to intentional wrongdoing or gross negligence, no public money shall be paid in settlement of such claim or in payment of any judgment against such receiver. Such action by the Attorney General shall not prejudice the right of the receiver to assert and establish as a defense that the claim arose out of an alleged act or omission occurring in the course and scope of the receiver's duties or that the act or omission complained of did not amount to intentional wrongdoing or gross negligence. If the receiver is successful in asserting such defense, the receiver shall be indemnified for the reasonable costs of defending the claim.

(5) If the receiver has been defended by the Attorney General and it is established by the judgment ultimately rendered on the claim that the act or omission complained of amounted to intentional wrongdoing or gross negligence, the judgment against the receiver shall provide for payment to the state of the state's costs, including a reasonable attorney's fee.

Source: Laws 1995, LB 406, § 70; Laws 2020, LB1053, § 19.

(k) MEDICAID PROGRAM VIOLATIONS

71-2097 Terms, defined.

For purposes of sections 71-2097 to 71-20,101:

(1) Civil penalty includes any remedy required under federal law and includes the imposition of a civil money penalty;

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

(3) Federal regulations for participation in the medicaid program means the regulations found in 42 C.F.R. parts 442 and 483, as amended, for participation in the medicaid program under Title XIX of the federal Social Security Act, as amended; and

(4) Nursing facility means any intermediate care facility or nursing facility, as defined in sections 71-420 and 71-424, which receives federal and state funds under Title XIX of the federal Social Security Act, as amended.

Source: Laws 1996, LB 1155, § 72; Laws 1997, LB 307, § 180; Laws 2000, LB 819, § 103; Laws 2007, LB296, § 523; Laws 2019, LB22, § 1.

71-2098 Civil penalties; department; powers.

(1) The department may assess, enforce, and collect civil penalties against a nursing facility which the department has found in violation of federal regulations for participation in the medicaid program pursuant to the authority granted to the department under section 81-604.03.

(2) If the department finds that a violation is life threatening to one or more residents or creates a direct threat of serious adverse harm to one or more residents, a civil penalty shall be imposed for each day the deficiencies which constitute the violation exist. The department may assess an appropriate civil penalty for other violations based on the nature of the violation. Any civil money penalty assessed shall not be less than fifty dollars nor more than ten thousand dollars for each day the facility is found to be in violation of such federal regulations. Any civil money penalty assessed shall include interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1996, LB 1155, § 73; Laws 1997, LB 307, § 181; Laws 2007, LB296, § 524; Laws 2019, LB22, § 2.

71-20,100 Nursing Facility Penalty Cash Fund; created; use; investment.

(1) The Nursing Facility Penalty Cash Fund is created. Any civil money penalty collected by the department as part of any civil penalty imposed pursuant to section 71-2098 or in accordance with the federal Social Security Act, as amended, and imposed by the Centers for Medicare and Medicaid Services pursuant to 42 C.F.R. 488.431 and disbursed to the department in accordance with 42 C.F.R. 488.433 or imposed by the department pursuant to 42 C.F.R. 488.432 shall be remitted to the State Treasurer for credit to such fund. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department shall adopt and promulgate rules and regulations which establish circumstances under which the department may distribute funds from the Nursing Facility Penalty Cash Fund. Funds collected as part of a civil money penalty imposed by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as described in

subsection (1) of this section shall be distributed in accordance with the federal Social Security Act, as amended, and the federal regulations for participation in the medicaid program, to support activities that benefit nursing home residents as provided in 42 C.F.R. 488.433.

Source: Laws 1996, LB 1155, § 75; Laws 1997, LB 307, § 183; Laws 2007, LB296, § 526; Laws 2019, LB22, § 3.

Cross References

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

ARTICLE 21
INFANTS

Section
71-2102. Abusive head trauma; legislative findings.
71-2103. Information for parents of newborn child; requirements.
71-2104. Public awareness activities; duties.

71-2102 Abusive head trauma; legislative findings.

The Legislature finds that abusive head trauma may occur when an infant or child is violently shaken as part of a pattern of abuse or because an adult has momentarily succumbed to the frustration of responding to a crying infant or child. The Legislature further finds that the injuries sustained by the infant or child can include brain swelling and damage, subdural hemorrhage, intellectual disability, or death. The Legislature further finds and declares that there is a present and growing need to provide programs aimed at reducing the number of cases of abusive head trauma in infants and children in Nebraska.

Source: Laws 2006, LB 994, § 148; Laws 2013, LB23, § 33; Laws 2019, LB60, § 2.

71-2103 Information for parents of newborn child; requirements.

Every hospital, birth center, or other medical facility that discharges a newborn child shall request that each maternity patient and father of a newborn child, if available, view a video presentation and read printed materials, approved by the Department of Health and Human Services, on the dangers of shaking infants and children, the symptoms of abusive head trauma in infants and children, the dangers associated with rough handling or the striking of an infant, safety measures which can be taken to prevent sudden infant death and abusive head trauma in infants and children, including crying plans, and the dangers associated with infants sleeping on the same surface with other children or adults. After viewing the presentation and reading the materials or upon a refusal to do so, the hospital, birth center, or other medical facility shall request that the mother and father, if available, sign a form stating that he or she has viewed and read or refused to view and read the presentation and materials. Such presentation, materials, and forms may be provided by the department.

Source: Laws 2006, LB 994, § 149; Laws 2019, LB60, § 3.

71-2104 Public awareness activities; duties.

The Department of Health and Human Services shall conduct public awareness activities designed to promote the prevention of sudden infant death syndrome and abusive head trauma in infants and children. The public awareness activities may include, but not be limited to, public service announcements, information kits and brochures, and the promotion of preventive telephone hotlines.

Source: Laws 2006, LB 994, § 150; Laws 2019, LB60, § 4.

ARTICLE 24

DRUGS

(c) EMERGENCY BOX DRUG ACT

Section
71-2411. Terms, defined.
71-2412. Long-term care facility; emergency boxes; use; conditions.
71-2413. Drugs to be included in emergency boxes; requirements; removal; conditions; notification of supplying pharmacy; expired drugs; treatment; examination of emergency boxes; written procedures; establishment.

(h) CLANDESTINE DRUG LABS

71-2433. Property owner; law enforcement agency; Nebraska State Patrol; duties.

(j) AUTOMATED MEDICATION SYSTEMS ACT

71-2449. Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.
71-2451. Long-term care facility; annual license; application; contents; inspection; pharmacist; duties; dispensing of drugs; labeling requirements; assisted-living facility; permitted use, when.

(l) PRESCRIPTION DRUG MONITORING PROGRAM

71-2454. Prescription drug monitoring; system established; provisions included; not public records.
71-2455. Prescription drug monitoring; Department of Health and Human Services; powers and duties; Health Information Technology Board; administration.

(m) PRESCRIPTION DRUG SAFETY ACT

71-2457. Prescription Drug Safety Act; act, how cited.
71-2458. Definitions, where found.
71-2461.01. Central fill, defined.
71-2468. Labeling, defined.
71-2478. Legend drug not a controlled substance; written, oral, or electronic prescription; information required; controlled substance; requirements; pharmacist; authority to adapt prescription; duties; prohibited acts.
71-2479. Legend drug not a controlled substance; prescription; retention; label; contents.

(n) DISCLOSURE OF COST, PRICE, OR COPAYMENT OF PRESCRIPTION DRUGS

71-2484. Repealed. Laws 2022, LB767, § 15.

(o) OPIOID PREVENTION AND TREATMENT

71-2485. Act, how cited.
71-2486. Act, purpose.
71-2487. Legislative findings.
71-2488. Funds appropriated or distributed; not considered entitlement or state obligation; conditions on expenditures.
71-2489. Funds appropriated; report on use.
71-2490. Nebraska Opioid Recovery Fund; created; use; investment.

(c) EMERGENCY BOX DRUG ACT

71-2411 Terms, defined.

For purposes of the Emergency Box Drug Act:

(1) Authorized personnel means any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, nurse practitioner, pharmacist, or physician assistant;

(2) Calculated expiration date has the same meaning as in section 38-2808.01;

(3) Department means the Department of Health and Human Services;

(4) Drug means any prescription drug or device or legend drug or device defined under section 38-2841, any nonprescription drug as defined under section 38-2829, any controlled substance as defined under section 28-405, or any device as defined under section 38-2814;

(5) Emergency box drugs means drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

(6) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health substance use treatment center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(7) Multiple dose vial means any bottle in which more than one dose of a liquid drug is stored or contained;

(8) NDC means the National Drug Code published by the United States Food and Drug Administration;

(9) Pharmacist means a pharmacist as defined in section 38-2832 who is employed by a supplying pharmacy or who has contracted with a long-term care facility to provide consulting services; and

(10) Supplying pharmacy means a pharmacy that supplies drugs for an emergency box located in a long-term care facility. Drugs in the emergency box are owned by the supplying pharmacy.

Source: Laws 1994, LB 1210, § 183; Laws 1996, LB 1044, § 625; Laws 1997, LB 608, § 16; Laws 2000, LB 819, § 106; Laws 2001, LB 398, § 70; Laws 2007, LB296, § 540; Laws 2007, LB463, § 1194; Laws 2009, LB195, § 69; Laws 2013, LB23, § 34; Laws 2018, LB1034, § 63; Laws 2020, LB1052, § 9.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-2412 Long-term care facility; emergency boxes; use; conditions.

(1) Drugs may be administered to residents of a long-term care facility by authorized personnel of the long-term care facility from the contents of emergency boxes located within such long-term care facility if such drugs and boxes meet the requirements of this section.

(2) When electronic or automated emergency boxes are in use in a long-term care facility, the supplying pharmacy shall have policies and procedures to ensure proper utilization of the drugs in the emergency boxes. Policies and procedures shall include who is allowed to retrieve drugs from the emergency boxes, security for the location of the emergency boxes within the long-term care facility, and other necessary provisions as determined by the pharmacist-in-charge of the supplying pharmacy.

(3) For emergency boxes that are not electronic or automated:

(a) All emergency box drugs shall be provided by and all emergency boxes containing such drugs shall be sealed by a supplying pharmacy with the seal on such emergency box to be of such a nature that it can be easily identified if it has been broken;

(b) Emergency boxes shall be stored in a medication room or other secured area within the long-term care facility. Only authorized personnel of the long-term care facility or the supplying pharmacy shall obtain access to such room or secured area, by key or combination, in order to prevent unauthorized access and to ensure a proper environment for preservation of the emergency box drugs;

(c) The exterior of each emergency box shall be labeled so as to clearly indicate that it is an emergency box for use in emergencies only. The label shall contain a listing of the drugs contained in the box, including the name, strength, route of administration, quantity, and expiration date of each drug, and the name, address, and telephone number of the supplying pharmacy; and

(d) Emergency boxes shall be inspected by a pharmacist designated by the supplying pharmacy at least once a month or after a reported usage of any drug to determine the expiration date and quantity of the drugs in the box. Every inspection shall be documented and the record retained by the long-term care facility for a period of five years.

(4) All drugs in emergency boxes shall be in the original manufacturer's or distributor's containers or shall be repackaged by the supplying pharmacy in a tight, light-resistant container and shall include the manufacturer's or distributor's name, lot number, drug name, strength, dosage form, NDC number, route of administration, and expiration date on a typewritten label. Any drug which is repackaged shall contain on the label the calculated expiration date.

Source: Laws 1994, LB 1210, § 184; Laws 2002, LB 1062, § 52; Laws 2007, LB463, § 1195; Laws 2009, LB195, § 70; Laws 2017, LB166, § 21; Laws 2020, LB1052, § 10.

71-2413 Drugs to be included in emergency boxes; requirements; removal; conditions; notification of supplying pharmacy; expired drugs; treatment; examination of emergency boxes; written procedures; establishment.

(1) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly determine the drugs, by identity and quantity, to be included in the emergency boxes. The supplying pharmacy shall maintain a list of emergency box drugs which is identical to the list on the exterior of the emergency box or the electronic inventory record of the emergency box and shall make such list available to the department upon request. The supplying pharmacy shall obtain a receipt upon delivery of the emergency box to the long-term care facility signed by the director of nursing of

the long-term care facility or his or her designee which acknowledges that the drugs initially placed in the emergency box are identical to the initial list on the exterior of the emergency box or the electronic inventory record of the emergency box. The receipt shall be retained by the supplying pharmacy for a period of five years.

(2) Except for the removal of expired drugs as provided in subsection (4) of this section, drugs shall be removed from emergency boxes only pursuant to a prescription. Whenever access to the emergency box occurs, the prescription and proof of use shall be provided to the supplying pharmacy and shall be recorded on the resident's medical record by authorized personnel of the long-term care facility. Removal of any drug from an emergency box by authorized personnel of the long-term care facility shall be recorded on a form showing the name of the resident who received the drug, his or her room number, the name of the drug, the strength of the drug, the quantity used, the dose administered, the route of administration, the date the drug was used, the time of usage, the disposal of waste, if any, and the signature or signatures of authorized personnel. The form shall be maintained at the long-term care facility for a period of five years from the date of removal with a copy of the form to be provided to the supplying pharmacy.

(3) Whenever an emergency box is opened or otherwise accessed, the supplying pharmacy shall be notified by the charge nurse or the director of nursing of the long-term care facility within twenty-four hours and a pharmacist designated by the supplying pharmacy shall restock and refill the box, reseal the box if it is not an electronic or automated emergency box, and update the drug listing on the exterior of the emergency box or update the electronic inventory record of the emergency box as outlined in the policies and procedures of the supplying pharmacy required by section 71-2412 for an electronic or automated emergency box.

(4) Upon the expiration of any drug in the emergency box, the supplying pharmacy shall replace the expired drug, reseal the box if it is not an electronic or automated emergency box, and update the drug listing on the exterior of the emergency box or update the electronic inventory record of the emergency box as outlined in the policies and procedures of the supplying pharmacy required by section 71-2412 for an electronic or automated emergency box. Emergency box drugs shall be considered inventory of the supplying pharmacy until such time as they are removed for administration.

(5) Authorized personnel of the long-term care facility shall examine the emergency boxes once every twenty-four hours and shall immediately notify the supplying pharmacy upon discovering evidence of tampering with any emergency box. Proof of examination by authorized personnel of the long-term care facility shall be recorded and maintained at the long-term care facility for a period of five years from the date of examination.

(6) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly establish written procedures for the safe and efficient distribution of emergency box drugs.

Source: Laws 1994, LB 1210, § 185; Laws 1999, LB 828, § 166; Laws 2001, LB 398, § 71; Laws 2009, LB195, § 71; Laws 2017, LB166, § 22; Laws 2020, LB1052, § 11.

(h) CLANDESTINE DRUG LABS

71-2433 Property owner; law enforcement agency; Nebraska State Patrol; duties.

A property owner with knowledge of a clandestine drug lab on his or her property shall report such knowledge and location as soon as practicable to the local law enforcement agency or to the Nebraska State Patrol. A law enforcement agency that discovers a clandestine drug lab in the State of Nebraska shall report the location of such lab to the Nebraska State Patrol within thirty days after making such discovery. Such report shall include the date of discovery of such lab, the county where the property containing such lab is located, and a legal description of the property or other description or address of such property sufficient to clearly establish its location. As soon as practicable after such discovery, the appropriate law enforcement agency shall provide the Nebraska State Patrol with a complete list of the chemicals, including methamphetamine, its precursors, solvents, and related reagents, found at or removed from the location of such lab. Upon receipt, the Nebraska State Patrol shall promptly forward a copy of such report and list to the department, the Department of Environment and Energy, the municipality or county where the lab is located, the director of the local public health department serving such municipality or county, and the property owner or owners.

Source: Laws 2006, LB 915, § 2; Laws 2019, LB302, § 88.

(j) AUTOMATED MEDICATION SYSTEMS ACT

71-2449 Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.

(1) An automated medication distribution machine:

(a) Is subject to the requirements of section 71-2447 and, if it is in a long-term care automated pharmacy, is subject to section 71-2451; and

(b) Subject to section 71-2451, may be operated or used in a hospital, long-term care facility, or assisted-living facility for medication administration pursuant to a chart order or prescription by a licensed health care professional.

(2) Drugs placed in an automated medication distribution machine shall be in the manufacturer's original packaging or in containers repackaged in compliance with state and federal laws, rules, and regulations relating to repackaging, labeling, and record keeping.

(3) The inventory which is transferred to an automated medication distribution machine in a hospital shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

Source: Laws 2008, LB308, § 6; Laws 2009, LB195, § 77; Laws 2013, LB326, § 8; Laws 2022, LB592, § 1.
Effective date July 21, 2022.

71-2451 Long-term care facility; annual license; application; contents; inspection; pharmacist; duties; dispensing of drugs; labeling requirements; assisted-living facility; permitted use, when.

(1) In order for an automated medication system to be operated in a long-term care facility, a pharmacist in charge of a pharmacy licensed under the Health Care Facility Licensure Act and located in Nebraska shall annually

license the long-term care automated pharmacy in which the automated medication system is located.

(2) The pharmacist in charge of a licensed pharmacy shall submit an application for licensure or renewal of licensure to the Division of Public Health of the Department of Health and Human Services with a fee in the amount of the fee the pharmacy pays for licensure or renewal. The application shall include:

(a) The name and location of the licensed pharmacy;

(b) If controlled substances are stored in the automated medication system, the federal Drug Enforcement Administration registration number of the licensed pharmacy. After the long-term care automated pharmacy is registered with the federal Drug Enforcement Administration, the pharmacist in charge of the licensed pharmacy shall provide the federal Drug Enforcement Administration registration number of the long-term care automated pharmacy to the division and any application for renewal shall include such registration number;

(c) The location of the long-term care automated pharmacy; and

(d) The name of the pharmacist in charge of the licensed pharmacy.

(3) As part of the application process, the division shall conduct an inspection by a pharmacy inspector as provided in section 38-28,101 of the long-term care automated pharmacy. The division shall also conduct inspections of the operation of the long-term care automated pharmacy as necessary.

(4) The division shall license a long-term care automated pharmacy which meets the licensure requirements of the Automated Medication Systems Act.

(5) A pharmacist in charge of a licensed pharmacy shall apply for a separate license for each location at which it operates one or more long-term care automated pharmacies. The licensed pharmacy shall be the provider pharmacy for the long-term care automated pharmacy.

(6) The pharmacist in charge of the licensed pharmacy operating a long-term care automated pharmacy shall:

(a) Identify a pharmacist responsible for the operation, supervision, policies, and procedures of the long-term care automated pharmacy;

(b) Implement the policies and procedures developed to comply with section 71-2447;

(c) Assure compliance with the drug storage and record-keeping requirements of the Pharmacy Practice Act;

(d) Assure compliance with the labeling requirements of subsection (8) of this section;

(e) Develop and implement policies for the verification of drugs by a pharmacist prior to being loaded into the automated medication system or for the verification of drugs by a pharmacist prior to being released for administration to a resident;

(f) Develop and implement policies for inventory, security, and accountability for controlled substances; and

(g) Assure that each medical order is reviewed by a pharmacist prior to the release of the drugs by the automated medication system. Emergency doses may be taken from an automated medication system prior to review by a pharmacist if the licensed pharmacy develops and implements policies for

emergency doses. Emergency doses may not be taken from an automated medication system prior to review by a pharmacist for residents of an assisted-living facility co-located with a long-term care facility.

(7) Supervision by a pharmacist is sufficient for compliance with the requirement of subdivision (6)(a) of this section if the pharmacist in the licensed pharmacy monitors the automated medication system electronically and keeps records of compliance with such requirement for five years.

(8) Each drug dispensed from a long-term care automated pharmacy shall be in a package with a label containing the following information:

(a) The name and address of the long-term care automated pharmacy;

(b) The prescription number;

(c) The name, strength, and dosage form of the drug;

(d) The name of the resident;

(e) The name of the practitioner who prescribed the drug;

(f) The date of filling; and

(g) Directions for use.

(9) A prescription is required for any controlled substance dispensed from a long-term care automated pharmacy and for any medication dispensed for a resident of an assisted-living facility co-located with a long-term care facility.

(10) An assisted-living facility co-located with a long-term care facility which has a long-term care automated pharmacy may obtain drugs dispensed from an automated medication distribution machine by the long-term care automated pharmacy for residents of the assisted-living facility as long as the procedures of the Automated Medication Systems Act are followed with regard to dispensing the drugs.

(11) The inventory which is transferred to a long-term care automated pharmacy shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

Source: Laws 2013, LB326, § 9; Laws 2022, LB592, § 2.
Effective date July 21, 2022.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Pharmacy Practice Act, see section 38-2801.

(l) PRESCRIPTION DRUG MONITORING PROGRAM

71-2454 Prescription drug monitoring; system established; provisions included; not public records.

(1) An entity described in section 71-2455 shall establish a system of prescription drug monitoring for the purposes of (a) preventing the misuse of controlled substances that are prescribed, (b) allowing prescribers and dispensers to monitor the care and treatment of patients for whom such a prescription drug is prescribed to ensure that such prescription drugs are used for medically appropriate purposes, (c) providing information to improve the health and safety of patients, and (d) ensuring that the State of Nebraska remains on the cutting edge of medical information technology.

(2) Such system of prescription drug monitoring shall be implemented as follows: Except as provided in subsection (4) of this section, all prescription

drug information shall be reported to the prescription drug monitoring system. The prescription drug monitoring system shall include, but not be limited to, provisions that:

(a) Prohibit any patient from opting out of the prescription drug monitoring system;

(b) Require any prescription drug that is dispensed in this state or to an address in this state to be entered into the system by the dispenser or his or her delegate no less frequently than daily after such prescription drug is sold, including prescription drugs for patients paying cash or otherwise not relying on a third-party payor for payment;

(c) Allow all prescribers or dispensers of prescription drugs to access the system at no cost to such prescriber or dispenser;

(d) Ensure that such system includes information relating to all payors, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act; and

(e) Make the prescription drug information available to the statewide health information exchange described in section 71-2455 for access by its participants if such access is in compliance with the privacy and security protections set forth in the provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, except that if a patient opts out of the statewide health information exchange, the prescription drug information regarding that patient shall not be accessible by the participants in the statewide health information exchange.

(3) Except as provided in subsection (4) of this section, prescription drug information that shall be submitted electronically to the prescription drug monitoring system shall be determined by the entity described in section 71-2455 and shall include, but not be limited to:

(a) The patient's name, address, telephone number, if a telephone number is available, gender, and date of birth;

(b) A patient identifier such as a military identification number, driver's license number, state identification card number, or other valid government-issued identification number, insurance identification number, pharmacy software-generated patient-specific identifier, or other identifier associated specifically with the patient;

(c) The name and address of the pharmacy dispensing the prescription drug;

(d) The date the prescription is issued;

(e) The date the prescription is filled;

(f) The date the prescription is sold to the patient;

(g) The number of refills authorized;

(h) The prescription number of the prescription drug;

(i) The National Drug Code number as published by the federal Food and Drug Administration of the prescription drug;

(j) The strength of the prescription drug prescribed;

(k) The quantity of the prescription drug prescribed and the number of days' supply;

(l) The prescriber's name and National Provider Identifier number or Drug Enforcement Administration number when reporting a controlled substance; and

(m) Additional information as determined by the Health Information Technology Board and as published in the submitter guide for the prescription drug monitoring system.

(4) Beginning July 1, 2018, a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act shall be required to report the dispensing of prescription drugs which are controlled substances listed on Schedule II, Schedule III, Schedule IV, or Schedule V pursuant to section 28-405. Each such veterinarian shall indicate that the prescription is an animal prescription and shall include the following information in such report:

(a) The first and last name and address, including city, state, and zip code, of the individual to whom the prescription drug is dispensed in accordance with a valid veterinarian-client-patient relationship;

(b) Reporting status;

(c) The first and last name of the prescribing veterinarian and his or her federal Drug Enforcement Administration number;

(d) The National Drug Code number as published by the federal Food and Drug Administration of the prescription drug and the prescription number;

(e) The date the prescription is written and the date the prescription is filled;

(f) The number of refills authorized, if any; and

(g) The quantity of the prescription drug and the number of days' supply.

(5)(a) All prescription drug information submitted pursuant to this section, all data contained in the prescription drug monitoring system, and any report obtained from data contained in the prescription drug monitoring system are confidential, are privileged, are not public records, and may be withheld pursuant to section 84-712.05 except for information released as provided in subsection (9) or (10) of this section.

(b) No patient-identifying data as defined in section 81-664, including the data collected under subsection (3) of this section, shall be disclosed, made public, or released to any public or private person or entity except to the statewide health information exchange described in section 71-2455 and its participants, to prescribers and dispensers as provided in subsection (2) of this section, or as provided in subsection (7), (9), or (10) of this section.

(c) All other data is for the confidential use of the department and the statewide health information exchange described in section 71-2455 and its participants. The department, or the statewide health information exchange in accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, may release such information in accordance with the privacy and security provisions set forth in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, as Class I, Class II, or Class IV data in accordance with section 81-667, except for purposes in accordance with subsection (9) or (10) of this section, to the private or public persons or entities that the department or the statewide health information exchange, in accordance with policies adopted by the Health Information Technology Board, determines may view such records as provided in sections 81-663 to 81-675. In addition, the department, or the statewide health information exchange in

accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, may release such information as provided in subsection (9) or (10) of this section.

(6) The statewide health information exchange described in section 71-2455, in accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, shall establish the minimum administrative, physical, and technical safeguards necessary to protect the confidentiality, integrity, and availability of prescription drug information.

(7) If the entity receiving the prescription drug information has privacy protections at least as restrictive as those set forth in this section and has implemented and maintains the minimum safeguards required by subsection (6) of this section, the statewide health information exchange described in section 71-2455, in accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, may release the prescription drug information and any other data collected pursuant to this section to:

(a) Other state prescription drug monitoring programs;

(b) State and regional health information exchanges;

(c) The medical director and pharmacy director of the Division of Medicaid and Long-Term Care of the department, or their designees;

(d) The medical directors and pharmacy directors of medicaid-managed care entities, the state's medicaid drug utilization review board, and any other state-administered health insurance program or its designee if any such entities have a current data-sharing agreement with the statewide health information exchange described in section 71-2455, and if such release is in accordance with the privacy and security provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and all regulations promulgated thereunder;

(e) Organizations which facilitate the interoperability and mutual exchange of information among state prescription drug monitoring programs or state or regional health information exchanges; or

(f) Electronic health record systems or pharmacy-dispensing software systems for the purpose of integrating prescription drug information into a patient's medical record.

(8) The department, or the statewide health information exchange described in section 71-2455, in accordance with policies adopted by the Health Information Technology Board and in collaboration with the department, may release to patients their prescription drug information collected pursuant to this section. Upon request of the patient, such information may be released directly to the patient or a personal health record system designated by the patient which has privacy protections at least as restrictive as those set forth in this section and that has implemented and maintains the minimum safeguards required by subsection (6) of this section.

(9) In accordance with the privacy and security provisions set forth in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, the department, or the statewide health information exchange described in section 71-2455 under policies adopted by the Health Information Technology Board, may release data collected pursuant to this section for statistical, public policy, or edu-

cational purposes after removing information which identifies or could reasonably be used to identify the patient, prescriber, dispenser, or other person who is the subject of the information, except as otherwise provided in subsection (10) of this section.

(10) In accordance with the privacy and security provisions set forth in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder, the department, or statewide health information exchange described in section 71-2455 under policies adopted by the Health Information Technology Board, may release data collected pursuant to this section for quality measures as approved or regulated by state or federal agencies or for patient quality improvement or research initiatives approved by the Health Information Technology Board.

(11) The statewide health information exchange described in section 71-2455, entities described in subsection (7) of this section, or the department may request and receive program information from other prescription drug monitoring programs for use in the prescription drug monitoring system in this state in accordance with the privacy and security provisions set forth in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder.

(12) The statewide health information exchange described in section 71-2455, in collaboration with the department, shall implement technological improvements to facilitate the secure collection of, and access to, prescription drug information in accordance with this section.

(13) Before accessing the prescription drug monitoring system, any user shall undergo training on the purpose of the system, access to and proper usage of the system, and the law relating to the system, including confidentiality and security of the prescription drug monitoring system. Such training shall be administered by the statewide health information exchange described in section 71-2455 or the department. The statewide health information exchange described in section 71-2455 shall have access to the prescription drug monitoring system for training operations, maintenance, and administrative purposes. Users who have been trained prior to May 10, 2017, or who are granted access by an entity receiving prescription drug information pursuant to subsection (7) of this section, are deemed to be in compliance with the training requirement of this subsection.

(14) For purposes of this section:

(a) Deliver or delivery means to actually, constructively, or attempt to transfer a drug or device from one person to another, whether or not for consideration;

(b) Department means the Department of Health and Human Services;

(c) Delegate means any licensed or registered health care professional credentialed under the Uniform Credentialing Act designated by a prescriber or dispenser to act as an agent of the prescriber or dispenser for purposes of submitting or accessing data in the prescription drug monitoring system and who is supervised by such prescriber or dispenser;

(d) Prescription drug or drugs means a prescription drug or drugs dispensed by delivery to the ultimate user or caregiver by or pursuant to the lawful order of a prescriber but does not include (i) the delivery of such prescription drug for immediate use for purposes of inpatient hospital care or emergency depart-

ment care, (ii) the administration of a prescription drug by an authorized person upon the lawful order of a prescriber, (iii) a wholesale distributor of a prescription drug monitored by the prescription drug monitoring system, or (iv) the dispensing to a nonhuman patient of a prescription drug which is not a controlled substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of section 28-405;

(e) Dispenser means a person authorized in the jurisdiction in which he or she is practicing to deliver a prescription drug to the ultimate user or caregiver by or pursuant to the lawful order of a prescriber;

(f) Participant means an individual or entity that has entered into a participation agreement with the statewide health information exchange described in section 71-2455 which requires the individual or entity to comply with the privacy and security protections set forth in the provisions of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and regulations promulgated thereunder; and

(g) Prescriber means a health care professional authorized to prescribe in the profession which he or she practices.

Source: Laws 2011, LB237, § 1; Laws 2014, LB1072, § 1; Laws 2016, LB471, § 1; Laws 2017, LB223, § 1; Laws 2018, LB1034, § 65; Laws 2019, LB556, § 4; Laws 2020, LB1183, § 7.

Cross References

Medical Assistance Act, see section 68-901.
Uniform Credentialing Act, see section 38-101.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.

71-2455 Prescription drug monitoring; Department of Health and Human Services; powers and duties; Health Information Technology Board; administration.

Subject to sections 81-6,127 and 81-6,128, the Department of Health and Human Services, in collaboration with the Nebraska Health Information Initiative or any successor public-private statewide health information exchange, shall enhance or establish technology for prescription drug monitoring to carry out the purposes of section 71-2454. The department may use state funds and accept grants, gifts, or other funds in order to implement and operate the technology. The department may adopt and promulgate rules and regulations to authorize use of electronic health information, if necessary to carry out the purposes of sections 71-2454 and 71-2455. The department shall contract with the statewide health information exchange for the administration of the Health Information Technology Board, and such contract shall specify that the health information exchange is responsible for the administration of the Health Information Technology Board, including, but not limited to, providing meeting notices, recording and distributing meeting minutes, administrative tasks related to the same, and funding such activities. The contract shall also include provisions for the statewide health information exchange to reimburse the expenses of the members of the board pursuant to subsection (5) of section 81-6,127. Such reimbursement shall be paid using a process essentially similar to sections 81-1174 to 81-1177. No state funds, including General Funds, cash funds, and federal funds, shall be used to carry out the administrative duties of

the Health Information Technology Board nor for reimbursement of the expenses of the board members.

Source: Laws 2011, LB237, § 2; Laws 2014, LB1072, § 2; Laws 2020, LB1183, § 8.

(m) PRESCRIPTION DRUG SAFETY ACT

71-2457 Prescription Drug Safety Act; act, how cited.

Sections 71-2457 to 71-2483 shall be known and may be cited as the Prescription Drug Safety Act.

Source: Laws 2015, LB37, § 1; Laws 2020, LB1052, § 12.

71-2458 Definitions, where found.

For purposes of the Prescription Drug Safety Act, the definitions found in sections 71-2459 to 71-2476 apply.

Source: Laws 2015, LB37, § 2; Laws 2020, LB1052, § 13.

71-2461.01 Central fill, defined.

Central fill means the preparation, other than by compounding, of a drug, device, or biological pursuant to a medical order where the preparation occurs in a pharmacy other than the pharmacy dispensing to the patient or caregiver.

Source: Laws 2020, LB1052, § 14.

71-2468 Labeling, defined.

Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packager, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by section 71-2479 and federal law or regulation. Compliance with labeling requirements under federal law for devices described in subsection (2) of section 38-2841, medical gases, and medical gas devices constitutes compliance with state law and regulations for purposes of this section. Labeling does not include affixing an auxiliary sticker or other such notation to a container after a drug has been dispensed when the sticker or notation is affixed by a person credentialed under the Uniform Credentialing Act in a facility licensed under the Health Care Facility Licensure Act.

Source: Laws 2015, LB37, § 12; Laws 2020, LB1052, § 15.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

71-2478 Legend drug not a controlled substance; written, oral, or electronic prescription; information required; controlled substance; requirements; pharmacist; authority to adapt prescription; duties; prohibited acts.

(1) Except as otherwise provided in this section or the Uniform Controlled Substances Act or except when administered directly by a practitioner to an ultimate user, a legend drug which is not a controlled substance shall not be dispensed without a written, oral, or electronic prescription. Such prescription shall be valid for twelve months after the date of issuance.

(2) A prescription for a legend drug which is not a controlled substance shall contain the following information prior to being filled by a pharmacist or practitioner who holds a pharmacy license under subdivision (1) of section 38-2850: (a) Patient's name, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of authorized refills, including pro re nata or PRN refills, (i) prescribing practitioner's name, and (j) if the prescription is written, prescribing practitioner's signature. Prescriptions for controlled substances must meet the requirements of sections 28-414 and 28-414.01.

(3)(a) A pharmacist who is exercising reasonable care and who has obtained patient consent may do the following:

(i) Change the quantity of a drug prescribed if:

(A) The prescribed quantity or package size is not commercially available; or

(B) The change in quantity is related to a change in dosage form;

(ii) Change the dosage form of the prescription if it is in the best interest of the patient and if the directions for use are also modified to equate to an equivalent amount of drug dispensed as prescribed;

(iii) Dispense multiple months' supply of a drug if a prescription is written with sufficient refills; and

(iv) Substitute any chemically equivalent drug product for a prescribed drug to comply with a drug formulary which is covered by the patient's health insurance plan unless the prescribing practitioner specifies ''no substitution'', ''dispense as written'', or ''D.A.W.'' to indicate that substitution is not permitted. If a pharmacist substitutes any chemically equivalent drug product as permitted under this subdivision, the pharmacist shall provide notice to the prescribing practitioner or the prescribing practitioner's designee. If drug product selection occurs involving a generic substitution, the drug product selection shall comply with section 38-28,111.

(b) A pharmacist who adapts a prescription in accordance with this subsection shall document the adaptation in the patient's pharmacy record.

(4) A written, signed paper prescription may be transmitted to the pharmacy via facsimile which shall serve as the original written prescription. An electronic prescription may be electronically or digitally signed and transmitted to the pharmacy and may serve as the original prescription.

(5) It shall be unlawful for any person knowingly or intentionally to possess or to acquire or obtain or to attempt to acquire or obtain, by means of misrepresentation, fraud, forgery, deception, or subterfuge, possession of any drug substance not classified as a controlled substance under the Uniform Controlled Substances Act which can only be lawfully dispensed, under federal statutes in effect on January 1, 2015, upon the written or oral prescription of a practitioner authorized to prescribe such substances.

Source: Laws 2015, LB37, § 22; Laws 2017, LB166, § 24; Laws 2020, LB1052, § 16.

Cross References

Uniform Controlled Substances Act, see section 28-401.01.

71-2479 Legend drug not a controlled substance; prescription; retention; label; contents.

(1) Any prescription for a legend drug which is not a controlled substance shall be kept by the pharmacy or the practitioner who holds a pharmacy license in a readily retrievable format and shall be maintained for a minimum of five years. The pharmacy or practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(2) Before dispensing a legend drug which is not a controlled substance pursuant to a written, oral, or electronic prescription, a label shall be affixed to the container in which the drug is dispensed. Such label shall bear (a) the name, address, and telephone number of the pharmacy or practitioner and the central fill pharmacy if central fill is used, (b) the name of the patient, (c) the date of filling, (d) the serial number of the prescription under which it is recorded in the practitioner's prescription records, (e) the name of the prescribing practitioner, (f) the directions for use, (g) the name of the drug, device, or biological unless instructed to omit by the prescribing practitioner, (h) the strength of the drug or biological, if applicable, (i) the quantity of the drug, device, or biological in the container, except unit-dose containers, (j) the dosage form of the drug or biological, and (k) any cautionary statements contained in the prescription.

(3) For multidrug containers, more than one drug, device, or biological may be dispensed in the same container when (a) such container is prepackaged by the manufacturer, packager, or distributor and shipped directly to the pharmacy in this manner or (b) the container does not accommodate greater than a thirty-one-day supply of compatible dosage units and is labeled to identify each drug or biological in the container in addition to all other information required by law.

Source: Laws 2015, LB37, § 23; Laws 2017, LB166, § 25; Laws 2020, LB1052, § 17.

(n) DISCLOSURE OF COST, PRICE, OR COPAYMENT OF PRESCRIPTION DRUGS

71-2484 Repealed. Laws 2022, LB767, § 15.
Operative date January 1, 2023.

(o) OPIOID PREVENTION AND TREATMENT

71-2485 Act, how cited.

Sections 71-2485 to 71-2490 shall be known and may be cited as the Opioid Prevention and Treatment Act.

Source: Laws 2020, LB1124, § 1.

71-2486 Act, purpose.

The purpose of the Opioid Prevention and Treatment Act is to provide for the use of dedicated revenue for opioid-disorder-related treatment and prevention.

Source: Laws 2020, LB1124, § 2.

71-2487 Legislative findings.

The Legislature finds that:

(1) There is an opioid epidemic occurring in the United States, and Nebraska has been impacted;

(2) Many states are recovering funds for the management of opioid addiction within their borders;

(3) Coordination surrounding and managing opioid addiction and related disorders is critical to the health and safety of all Nebraskans;

(4) Funding for prevention and treatment of opioid addiction and related disorders, including those that are co-occurring with other mental health and substance use disorders, is needed in Nebraska;

(5) Law enforcement agencies in the State of Nebraska are dealing with the effects of the opioid epidemic daily and are in need of resources for training, education, and interdiction;

(6) There is a need to enhance the network of professionals who provide treatment for opioid addiction and related disorders, including co-occurring mental health disorders and other co-occurring substance use disorders;

(7) There is a need for education of medical professionals, including training on proper prescription practices and best practices for tapering patients off of prescribed opioids for medical use;

(8) Incarcerated individuals in the Nebraska correctional system and other vulnerable populations with opioid use disorder need access to resources that will help address addiction; and

(9) The health and safety of all Nebraskans will be improved by the abatement of opioid addiction in the State of Nebraska.

Source: Laws 2020, LB1124, § 3.

71-2488 Funds appropriated or distributed; not considered entitlement or state obligation; conditions on expenditures.

Any funds appropriated or distributed under the Opioid Prevention and Treatment Act shall not be considered ongoing entitlements or an obligation on the part of the State of Nebraska. Any funds appropriated or distributed under the act shall be spent in accordance with the terms of any verdict, judgment, compromise, or settlement in or out of court, of any case or controversy brought by the Attorney General pursuant to the Consumer Protection Act or the Uniform Deceptive Trade Practices Act.

Source: Laws 2020, LB1124, § 4.

Cross References

Consumer Protection Act, see section 59-1623.
Uniform Deceptive Trade Practices Act, see section 87-306.

71-2489 Funds appropriated; report on use.

The Department of Health and Human Services shall report annually on or before December 15 to the Legislature, the Governor, and the Attorney General regarding the use of funds appropriated under the Opioid Prevention and

Treatment Act and the outcomes achieved from such use. The reports submitted to the Legislature shall be submitted electronically.

Source: Laws 2020, LB1124, § 5.

71-2490 Nebraska Opioid Recovery Fund; created; use; investment.

(1) The Nebraska Opioid Recovery Fund is created. The fund shall include all recoveries received on behalf of the state by the Department of Justice pursuant to the Consumer Protection Act or the Uniform Deceptive Trade Practices Act related to the advertising of opioids. The fund shall include any money, payments, or other things of value in the nature of civil damages or other payment, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, of any case or controversy pursuant to such acts. The Department of Justice shall remit any such revenue to the State Treasurer for credit to the Nebraska Opioid Recovery Fund.

(2) Any funds appropriated, expended, or distributed from the Nebraska Opioid Recovery Fund shall be spent in accordance with the terms of any verdict, judgment, compromise, or settlement in or out of court, of any case or controversy brought by the Attorney General pursuant to the Consumer Protection Act or the Uniform Deceptive Trade Practices Act.

(3) The fund shall exclude funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, political subdivisions, or governments. Such excluded funds shall be deposited in the State Settlement Trust Fund pursuant to section 59-1608.05.

(4) Any money in the Nebraska Opioid Recovery Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2020, LB1124, § 6.

Cross References

Consumer Protection Act, see section 59-1623.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
Uniform Deceptive Trade Practices Act, see section 87-306.

ARTICLE 26

STATE BOARD OF HEALTH

Section
71-2605. Board; members; per diem; expenses.
71-2618. Water samples; analyses; fees; testing; agreements; certification; standards; fees; existing rules, regulations, certifications; agreements, forms of approval, suits, other proceedings; how treated.
71-2619. Laboratory supplies and services; fees; establish; disposition.
71-2621. Fees; laboratory tests and services; credited to Health and Human Services Cash Fund.
71-2622. Transferred to section 81-15,292.

71-2605 Board; members; per diem; expenses.

The members of the State Board of Health shall receive the sum of twenty dollars per diem, while actually engaged in the business of the board, and shall

be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1953, c. 335, § 11, p. 1103; Laws 1981, LB 204, § 123; Laws 2020, LB381, § 63.

71-2618 Water samples; analyses; fees; testing; agreements; certification; standards; fees; existing rules, regulations, certifications; agreements, forms of approval, suits, other proceedings; how treated.

(1) For purposes of the Nebraska Safe Drinking Water Act, the Director of Public Health of the Department of Health and Human Services may establish and collect fees for making laboratory analyses of water samples pursuant to sections 71-2619 to 71-2621, except that subsection (6) of section 71-2619 shall not apply for purposes of the Nebraska Safe Drinking Water Act. Inspection fees for making other laboratory agreements shall be established and collected pursuant to sections 71-2619 to 71-2621.

(2)(a) The Director of Public Health of the Department of Health and Human Services shall certify and enter into authorization agreements with laboratories to perform tests on water that is intended for human consumption, including the tests required by the director for compliance and monitoring purposes. The director shall establish, through rules and regulations, standards for certification. Such standards (i) may include requirements for staffing, equipment, procedures, and methodology for conducting laboratory tests, quality assurance and quality control procedures, and communication of test results, (ii) shall provide for certification of independent laboratories to test samples provided by public water systems for all acute toxins for which the department tests such samples, including, but not limited to, coliform, nitrates, inorganic chemicals, organic chemicals, radionuclides, and any other acute toxins for which the department tests such samples, and (iii) shall be consistent with requirements for performing laboratory tests established by the United States Environmental Protection Agency to the extent such requirements are consistent with state law. The director may accept accreditation by a recognized independent accreditation body, public agency, or federal program which has standards that are at least as stringent as those established pursuant to this section. The director may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that may be accepted as evidence that a laboratory meets the standards for certification. Inspection fees and fees for certifying other laboratories shall be established and collected to defray the cost of the inspections and certification as provided in sections 71-2619 to 71-2621.

(b) Laboratories shall be allowed to test water samples which are not compliance samples by testing methods other than the methods and procedures required to be used on compliance samples by rules and regulations of the department. For purposes of this section, compliance sample means a water sample required under the Nebraska Safe Drinking Water Act and rules and regulations of the department to determine whether a public water system meets current drinking water standards.

(3) All rules and regulations adopted prior to July 1, 2021, under subdivision (1)(b) or subsection (2) of section 71-5306 shall continue to be effective to the extent not in conflict with the changes made by Laws 2021, LB148, and until amended or repealed by the department.

(4) All certifications, agreements, or other forms of approval issued prior to July 1, 2021, in accordance with subdivision (1)(b) or subsection (2) of section 71-5306 shall remain valid as issued for purposes of the changes made by Laws 2021, LB148, unless revoked or otherwise terminated by law.

(5) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to July 1, 2021, under subdivision (1)(b) or subsection (2) of section 71-5306 shall be subject to the provisions of such section as they existed prior to July 1, 2021.

Source: Laws 2021, LB148, § 71.

Cross References

Nebraska Safe Drinking Water Act, see section 71-5313.

71-2619 Laboratory supplies and services; fees; establish; disposition.

(1) The Department of Health and Human Services may by regulation establish fees to defray the costs of providing specimen containers, shipping outfits, and related supplies and fees to defray the costs of certain laboratory examinations as requested by individuals, firms, corporations, or governmental agencies in the state. Fees for the provision of certain classes of shipping outfits or specimen containers shall be no more than the actual cost of materials, labor, and delivery. Fees for the provision of shipping outfits may be made when no charge is made for service.

(2) Fees may be established by regulation for chemical or microbiological examinations of various categories of water samples. Fees established for examination of water to ascertain qualities for domestic, culinary, and associated uses shall be set to defray no more than the actual cost of the tests in the following categories: (a) Inorganic chemical assays; (b) organic pollutants; and (c) bacteriological examination to indicate sanitary quality as coliform density by membrane filter test or equivalent test.

(3) Fees for examinations of water from lakes, streams, impoundments, or similar sources, from wastewaters, or from ground water for industrial or agricultural purposes may be charged in amounts established by regulation but shall not exceed one and one-half times the limits set by regulation for examination of domestic waters.

(4) Fees may be established by regulation for chemical or microbiological examinations of various categories of samples to defray no more than the actual cost of testing. Such fees may be charged for:

(a) Any specimen submitted for radiochemical analysis or characterization;

(b) Any material submitted for chemical characterization or quantitation; and

(c) Any material submitted for microbiological characterization.

(5) Fees may be established by regulation for the examinations of certain categories of biological and clinical specimens to defray no more than the actual costs of testing. Such fees may be charged for examinations pursuant to law or regulation of:

(a) Any specimen submitted for chemical examination for assessment of health status or functional impairment;

(b) Any specimen submitted for microbiological examination which is not related to direct human contact with the microbiological agent; and

(c) A specimen submitted for microbiological examination or procedure by an individual, firm, corporation, or governmental unit other than the department.

(6) The department shall not charge fees for tests that include microbiological isolation, identification examination, or other laboratory examination for the following:

(a) A contagious disease when the department is authorized by law or regulation to directly supervise the prevention, control, or surveillance of such contagious disease;

(b) Any emergency when the health of the people of any part of the state is menaced or exposed pursuant to section 71-502; and

(c) When adopting or enforcing special quarantine and sanitary regulations authorized by the department.

(7) Combinations of different tests or groups of tests submitted together may be offered at rates less than those set for individual tests as allowed in this section and shall defray the actual costs.

(8) Fees may be established by regulation to defray no more than the actual costs of certifying laboratories, inspecting laboratories, and making laboratory agreements between the department and laboratories other than the Department of Health and Human Services, Division of Public Health, Environmental Laboratory for the purpose of conducting analyses of drinking water as prescribed in section 71-2618. For each laboratory applying for certification, fees shall include (a) an annual fee not to exceed one thousand eight hundred dollars per laboratory and (b) an inspection fee not to exceed three thousand dollars per certification period for each laboratory located in this state.

(9) All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1973, LB 583, § 2; Laws 1983, LB 617, § 21; Laws 1986, LB 1047, § 4; Laws 1996, LB 1044, § 636; Laws 2007, LB296, § 552; Laws 2008, LB928, § 20; Laws 2021, LB148, § 69.

71-2621 Fees; laboratory tests and services; credited to Health and Human Services Cash Fund.

All fees collected for laboratory tests and services pursuant to sections 71-2618 to 71-2620 shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, which shall be used to partially defray the costs of labor, operations, supplies, and materials in the operations of the Department of Health and Human Services, Division of Public Health, Environmental Laboratory.

Source: Laws 1973, LB 583, § 4; Laws 1996, LB 1044, § 638; Laws 2007, LB296, § 554; Laws 2008, LB928, § 22; Laws 2021, LB148, § 70.

71-2622 Transferred to section 81-15,292.

ARTICLE 27

HEALTH CARE CRISIS PROTOCOL ACT

Section
71-2701. Act, how cited.
71-2702. Health care crisis protocol, defined.

Section
71-2703. Health care crisis protocol; activated; when.
71-2704. Health care providers; standards; effect of health care crisis protocol.
71-2705. Health care crisis protocol; hospital; Department of Health and Human Services; duties.

71-2701 Act, how cited.

Sections 71-2701 to 71-2705 shall be known and may be cited as the Health Care Crisis Protocol Act.

Source: Laws 2021, LB139, § 5.

Cross References

COVID-19 Liability Act, see section 25-3601.

71-2702 Health care crisis protocol, defined.

For purposes of the Health Care Crisis Protocol Act, health care crisis protocol means the plans and protocols for triage and the application of medical services and resources for critically ill patients in the event that the demand for medical services and resources exceeds supply as a result of a pervasive or catastrophic disaster as provided in the Health Care Crisis Protocol for the State of Nebraska published by the Nebraska Medical Emergency Operations Center, dated May 10, 2021.

Source: Laws 2021, LB139, § 6.

Cross References

COVID-19 Liability Act, see section 25-3601.

71-2703 Health care crisis protocol; activated; when.

The health care crisis protocol may be activated only in extraordinary circumstances when the level of demand for medical services and resources exceeds the available resources required to deliver the generally accepted standard of care and crisis operations will be in effect for a sustained period.

Source: Laws 2021, LB139, § 7.

Cross References

COVID-19 Liability Act, see section 25-3601.

71-2704 Health care providers; standards; effect of health care crisis protocol.

The health care crisis protocol does not change or alter the standard for malpractice or professional negligence for health care providers set forth in section 44-2810.

Source: Laws 2021, LB139, § 8.

Cross References

COVID-19 Liability Act, see section 25-3601.

71-2705 Health care crisis protocol; hospital; Department of Health and Human Services; duties.

(1) Each hospital shall have the health care crisis protocol available for inspection by the public.

(2) The Department of Health and Human Services shall publish a copy of the health care crisis protocol on the department's website for inspection by the public.

(3) For purposes of this section, hospital means a hospital licensed under the Health Care Facility Licensure Act.

Source: Laws 2021, LB139, § 9.

Cross References

COVID-19 Liability Act, see section 25-3601.
Health Care Facility Licensure Act, see section 71-401.

ARTICLE 31
RECREATION CAMPS

Section
71-3101. Transferred to section 81-15,271.
71-3102. Transferred to section 81-15,272.
71-3103. Transferred to section 81-15,273.
71-3104. Transferred to section 81-15,274.
71-3105. Transferred to section 81-15,275.
71-3106. Transferred to section 81-15,276.
71-3107. Transferred to section 81-15,277.

71-3101 Transferred to section 81-15,271.

71-3102 Transferred to section 81-15,272.

71-3103 Transferred to section 81-15,273.

71-3104 Transferred to section 81-15,274.

71-3105 Transferred to section 81-15,275.

71-3106 Transferred to section 81-15,276.

71-3107 Transferred to section 81-15,277.

ARTICLE 32
PRIVATE DETECTIVES

Section
71-3204. Secretary of State; rules and regulations; fees.

71-3204 Secretary of State; rules and regulations; fees.

(1) The secretary may adopt and promulgate and alter from time to time rules and regulations relating to the administration of, but not inconsistent with, sections 71-3201 to 71-3213.

(2) The secretary shall establish fees for initial and renewal applications for applicants at rates sufficient to cover the costs of administering sections 71-3201 to 71-3213. The secretary shall remit the fees received pursuant to this section to the State Treasurer for credit to the Secretary of State Cash Fund.

Source: Laws 1959, c. 329, § 4, p. 1197; Laws 2002, Second Spec. Sess., LB 25, § 1; Laws 2020, LB910, § 31.

ARTICLE 33

FLUORIDATION

Section
71-3305. Political subdivision; fluoride added to water supply; exception; ordinance to prohibit addition of fluoride; ballot; vote.

71-3305 Political subdivision; fluoride added to water supply; exception; ordinance to prohibit addition of fluoride; ballot; vote.

(1) Except as otherwise provided in subsection (2) or (3) of this section, any city or village having a population of one thousand or more inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall add fluoride to the water supply for human consumption for such city or village as provided in the rules and regulations of the Department of Health and Human Services unless such water supply has sufficient amounts of naturally occurring fluoride as provided in such rules and regulations.

(2) Subsection (1) of this section does not apply if the voters of the city or village adopted an ordinance, after April 18, 2008, but before June 1, 2010, to prohibit the addition of fluoride to such water supply.

(3) If any city or village reaches a population of one thousand or more inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census after June 1, 2010, and is required to add fluoride to its water supply under subsection (1) of this section, the city or village may adopt an ordinance to prohibit the addition of fluoride to such water supply. The ordinance may be placed on the ballot by a majority vote of the governing body of the city or village or by initiative pursuant to the Municipal Initiative and Referendum Act. Such proposed ordinance shall be voted upon at the next statewide general election after the population of the city or village reaches one thousand or more inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census.

(4) Any rural water district organized under sections 46-1001 to 46-1020 that supplies water for human consumption to any city or village which is required to add fluoride to such water supply under this section shall not be responsible for any costs, equipment, testing, or maintenance related to such fluoridation unless such district has agreed with the city or village to assume such responsibilities.

Source: Laws 1973, LB 449, § 1; Laws 1975, LB 245, § 2; Laws 1982, LB 807, § 45; Laws 1996, LB 1044, § 644; Laws 2007, LB296, § 559; Laws 2008, LB245, § 1; Laws 2011, LB36, § 1; Laws 2017, LB113, § 53; Laws 2021, LB163, § 200.

Cross References

Municipal Initiative and Referendum Act, see section 18-2501.

ARTICLE 34

REDUCTION IN MORBIDITY AND MORTALITY

(b) CHILD AND MATERNAL DEATHS

(c) DOMESTIC ABUSE DEATHS

(b) CHILD AND MATERNAL DEATHS

71-3404 Act, how cited; child deaths; stillbirths; maternal deaths; legislative findings and intent.

(1) Sections 71-3404 to 71-3411 shall be known and may be cited as the Child and Maternal Death Review Act.

(2) The Legislature finds and declares that it is in the best interests of the state, its residents, and especially the children of this state that the number and causes of death of children, including stillbirths, in this state be examined. There is a need for a comprehensive integrated review of all child deaths and stillbirths in Nebraska and a system for statewide retrospective review of existing records relating to each child death and stillbirth.

(3) The Legislature further finds and declares that it is in the best interests of the state and its residents that the number and causes of maternal death in this state be examined. There is a need for a comprehensive integrated review of all maternal deaths in Nebraska and a system for statewide retrospective review of existing records relating to each maternal death.

(4) It is the intent of the Legislature, by creation of the Child and Maternal Death Review Act, to:

(a) Identify trends from the review of past records to prevent future child deaths, stillbirths, and maternal deaths from similar causes when applicable;

(b) Recommend systematic changes for the creation of a cohesive method for responding to certain child deaths, stillbirths, and maternal deaths; and

(c) When appropriate, cause referral to be made to those agencies as required in section 28-711 or as otherwise required by state law.

Source: Laws 1993, LB 431, § 1; Laws 2013, LB361, § 1; Laws 2022, LB741, § 47.
Effective date July 21, 2022.

71-3405 Terms, defined.

For purposes of the Child and Maternal Death Review Act:

(1) Child means a person from birth to eighteen years of age;

(2) Investigation of child death means a review of existing records and other information regarding the child or stillbirth from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, records of alternative response cases under alternative response implemented in accordance with sections 28-710.01, 28-712, and 28-712.01, educational records, emergency and paramedic records, and law enforcement reports;

(3) Investigation of maternal death means a review of existing records and other information regarding the woman from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, educational records, emergency and paramedic records, and law enforcement reports;

(4) Maternal death means the death of a woman during pregnancy or the death of a postpartum woman;

(5) Postpartum woman means a woman during the period of time beginning when the woman ceases to be pregnant and ending one year after the woman ceases to be pregnant;

(6) Preventable child death means the death of any child or stillbirth which reasonable medical, social, legal, psychological, or educational intervention may have prevented. Preventable child death includes, but is not limited to, the death of a child or stillbirth resulting from (a) intentional and unintentional injuries, (b) medical misadventures, including untoward results, malpractice, and foreseeable complications, (c) lack of access to medical care, (d) neglect and reckless conduct, including failure to supervise and failure to seek medical care for various reasons, and (e) preventable premature birth;

(7) Preventable maternal death means the death of a pregnant or postpartum woman when there was at least some chance of the death being averted by one or more reasonable changes to (a) the patient, (b) the patient's family, (c) the health care provider, facility, or system, or (d) community factors;

(8) Reasonable means taking into consideration the condition, circumstances, and resources available;

(9) Stillbirth means a spontaneous fetal death which resulted in a fetal death certificate pursuant to section 71-606; and

(10) Teams means the State Child Death Review Team and the State Maternal Death Review Team.

Source: Laws 1993, LB 431, § 2; Laws 2013, LB361, § 2; Laws 2014, LB853, § 46; Laws 2020, LB1061, § 10; Laws 2022, LB741, § 48.
Effective date July 21, 2022.

71-3406 State Child Death Review Team and State Maternal Death Review Team; members; terms; chairpersons; not considered public body; meetings; expenses.

(1) The chief executive officer of the Department of Health and Human Services shall appoint a minimum of twelve members each to the State Child Death Review Team and the State Maternal Death Review Team. A person seeking appointment shall apply using an application process developed by the chief executive officer.

(2) The core members shall serve on both teams and shall be (a) a physician employed by the department, who shall be a permanent member of the teams, (b) a forensic pathologist, (c) a law enforcement representative, (d) a mental health provider, and (e) an attorney.

(3) Additional required members appointed to the State Child Death Review Team shall include the Inspector General of Nebraska Child Welfare and a senior department staff member with child protective services, who shall be permanent members. The remaining members appointed to the State Child Death Review Team may include, but shall not be limited to, the following: (a) A county attorney; (b) a Federal Bureau of Investigation agent responsible for investigations on Native American reservations; (c) a social worker; and (d) members of organizations which represent hospitals or physicians.

(4) The remaining members appointed to the State Maternal Death Review Team may include, but shall not be limited to, the following: (a) County attorneys; (b) representatives of tribal organizations; (c) social workers; (d) medical providers, including, but not limited to, the practice areas of obstetrics, maternal-fetal medicine, and anesthesiology; (e) public health workers; (f) community birth workers; and (g) community advocates. In appointing members to the State Maternal Death Review Team, the chief executive officer of the department shall consider members working in and representing communities that are diverse with regard to race, ethnicity, immigration status, and English proficiency and include members from differing geographic regions in the state, including both rural and urban areas.

(5) The department shall be responsible for the general administration of the activities of the teams and shall employ or contract with team coordinators to provide administrative support for each team and shall provide a team data abstractor for the teams.

(6) Members shall serve four-year terms with the exception of the permanent members. Each team shall annually elect a chairperson from among its members.

(7) The teams shall not be considered a public body for purposes of the Open Meetings Act. The teams shall meet a minimum of four times a year. Members

of the teams shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1993, LB 431, § 3; Laws 1996, LB 1044, § 648; Laws 1997, LB 307, § 187; Laws 1998, LB 1073, § 125; Laws 2003, LB 467, § 1; Laws 2004, LB 821, § 17; Laws 2007, LB296, § 563; Laws 2013, LB269, § 12; Laws 2013, LB361, § 3; Laws 2020, LB381, § 64; Laws 2022, LB741, § 49.
Effective date July 21, 2022.

Cross References

Open Meetings Act, see section 84-1407.

71-3407 Teams; purposes; duties; powers.

(1) The purpose of the teams shall be to (a) develop an understanding of the causes and incidence of child deaths, stillbirths, or maternal deaths in this state, (b) develop recommendations for changes within relevant agencies and organizations which may serve to prevent child deaths, stillbirths, or maternal deaths, and (c) advise the Governor, the Legislature, and the public on changes to law, policy, and practice which will prevent child deaths, stillbirths, or maternal deaths.

(2) The teams shall:

(a) Undertake annual statistical studies of the causes and incidence of child or maternal deaths in this state. The studies shall include, but not be limited to, an analysis of the records of community, public, and private agency involvement with the children, the pregnant or postpartum women, and their families prior to and subsequent to the child or maternal deaths;

(b) Develop a protocol for retrospective investigation of child or maternal deaths by the teams;

(c) Develop a protocol for collection of data regarding child or maternal deaths by the teams;

(d) Consider training needs, including cross-agency training, and service gaps;

(e) Include in its annual report recommended changes to any law, rule, regulation, or policy needed to decrease the incidence of preventable child or maternal deaths;

(f) Educate the public regarding the incidence and causes of child or maternal deaths, the public role in preventing child or maternal deaths, and specific steps the public can undertake to prevent child or maternal deaths. The teams may enlist the support of civic, philanthropic, and public service organizations in the performance of educational duties;

(g) Provide the Governor, the Legislature, and the public with annual reports which shall include the teams' findings and recommendations for each of their duties. Each team shall submit an annual report on or before each December 31 to the Legislature electronically; and

(h) When appropriate, make referrals to those agencies as required in section 28-711 or as otherwise required by state law.

(3) The teams may enter into consultation agreements with relevant experts to evaluate the information and records collected. All of the confidentiality provisions of section 71-3411 shall apply to the activities of a consulting expert.

(4) The teams may enter into written agreements with entities to provide for the secure storage of electronic data, including data that contains personal or incident identifiers. Such agreements shall provide for the protection of the security and confidentiality of the content of the information, including access limitations, storage of the information, and destruction of the information. All of the confidentiality provisions of section 71-3411 shall apply to the activities of the data storage entity.

(5) The teams may enter into agreements with a local public health department as defined in section 71-1626 to act as the agent of the teams in conducting all information gathering and investigation necessary for the purposes of the Child and Maternal Death Review Act. All of the confidentiality provisions of section 71-3411 shall apply to the activities of the agent.

(6) For purposes of this section, entity means an organization which provides collection and storage of data from multiple agencies but is not solely controlled by the agencies providing the data.

Source: Laws 1993, LB 431, § 4; Laws 2012, LB782, § 116; Laws 2012, LB1160, § 18; Laws 2013, LB361, § 4; Laws 2017, LB506, § 5; Laws 2022, LB741, § 50.
Effective date July 21, 2022.

71-3408 Chairperson; team coordinator; duties; team data abstractor; qualifications; duties.

(1) The chairperson of each team shall:

(a) Chair meetings of the teams; and

(b) Ensure identification of strategies to prevent child or maternal deaths.

(2) The team coordinator of each team provided under subsection (5) of section 71-3406 shall:

(a) Have the necessary information from investigative reports, medical records, coroner's reports, autopsy reports, educational records, and other relevant items made available to the team;

(b) Ensure timely notification of the team members of an upcoming meeting;

(c) Ensure that all team reporting and data-collection requirements are met;

(d) Oversee adherence to the review process established by the Child and Maternal Death Review Act; and

(e) Perform such other duties as the team deems appropriate.

(3) The team data abstractor provided under subsection (5) of section 71-3406 shall:

(a) Possess qualifying nursing experience, a demonstrated understanding of child and maternal outcomes, strong professional communication skills, data entry and relevant computer skills, experience in medical record review, flexibility and ability to accomplish tasks in short timeframes, appreciation of the community, knowledge of confidentiality laws, the ability to serve as an objective unbiased storyteller, and a demonstrated understanding of social determinants of health;

(b) Request records for identified cases from sources described in section 71-3410;

(c) Upon receipt of such records, review all pertinent records to complete fields in child, stillbirth, and maternal death databases;

(d) Summarize findings in a case summary; and

(e) Report all findings to the team coordinators.

Source: Laws 1993, LB 431, § 5; Laws 2013, LB361, § 5; Laws 2022, LB741, § 51.
Effective date July 21, 2022.

71-3409 Review of child deaths, stillbirths, and maternal deaths; manner.

(1)(a) The State Child Death Review Team shall review child deaths in the manner provided in this subsection.

(b) The members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the department. The members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies.

(c) A review shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The members may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

(2)(a) The team may review stillbirths occurring on or after January 1, 2023, in the manner provided in this subsection.

(b) The members may review the death certificates and other documentation which will allow the team to identify preventable causes of stillbirths.

(c) Nothing in this subsection shall be interpreted to require review of any stillbirth death.

(3)(a) The State Maternal Death Review Team shall review all maternal deaths in the manner provided in this subsection.

(b) The members shall review the maternal death records in accordance with evidence-based best practices in order to determine: (i) If the death is pregnancy-related; (ii) the cause of death; (iii) if the death was preventable; (iv) the factors that contributed to the death; (v) recommendations and actions that address those contributing factors; and (vi) the anticipated impact of those actions if implemented.

(c) A review shall not be conducted on any maternal death under active investigation by a law enforcement agency or under criminal prosecution. The members may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of domestic abuse, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

Source: Laws 1993, LB 431, § 6; Laws 1996, LB 1044, § 649; Laws 2013, LB361, § 6; Laws 2022, LB741, § 52.
Effective date July 21, 2022.

71-3410 Provision of information and records; subpoenas.

(1) Upon request, the teams shall be immediately provided:

(a) Information and records maintained by a provider of medical, dental, prenatal, and mental health care, including medical reports, autopsy reports, and emergency and paramedic records; and

(b) All information and records maintained by any agency of state, county, or local government, any other political subdivision, any school district, or any public or private educational institution, including, but not limited to, birth and death certificates, law enforcement investigative data and reports, coroner investigative data and reports, educational records, parole and probation information and records, and information and records of any social services agency that provided services to the child, the pregnant or postpartum woman, or the family of the child or woman.

(2) The Department of Health and Human Services shall have the authority to issue subpoenas to compel production of any of the records and information specified in subdivisions (1)(a) and (b) of this section, except records and information on any child death, stillbirth, or maternal death under active investigation by a law enforcement agency or which is at the time the subject of a criminal prosecution, and shall provide such records and information to the teams.

Source: Laws 1993, LB 431, § 7; Laws 1996, LB 1044, § 650; Laws 1998, LB 1073, § 126; Laws 2007, LB296, § 564; Laws 2013, LB361, § 7; Laws 2022, LB741, § 53.
Effective date July 21, 2022.

71-3411 Information and records; confidentiality; release; conditions; disclosure; limitations.

(1)(a) All information and records acquired by the teams in the exercise of their purposes and duties pursuant to the Child and Maternal Death Review Act shall be confidential and exempt from disclosure and may only be disclosed as provided in this section and as provided in section 71-3407. Statistical compilations of data made by the teams which do not contain any information that would permit the identification of any person to be ascertained shall be public records.

(b) De-identified information and records obtained by the teams may be released to a researcher, upon proof of identity and qualifications of the researcher, if the researcher is employed by a research organization, university, institution, or government agency and is conducting scientific, medical, or public health research and if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such release shall provide for a written agreement with the Department of Health and Human Services providing protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(c) De-identified information and records obtained by the teams may be released to the United States Public Health Service or its successor, a government health agency, or a local public health department as defined in section 71-1626 if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such

release shall provide for protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(2) Except as necessary to carry out the teams' purposes and duties, members of the teams and persons attending team meetings may not disclose what transpired at the meetings and shall not disclose any information the disclosure of which is prohibited by this section.

(3) Members of the teams and persons attending team meetings shall not testify in any civil, administrative, licensure, or criminal proceeding, including depositions, regarding information reviewed in or opinions formed as a result of team meetings. This subsection shall not be construed to prevent a person from testifying to information obtained independently of the teams or which is public information.

(4) Information, documents, and records of the teams shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information, documents, and records otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of the teams or are maintained by the teams.

Source: Laws 1993, LB 431, § 8; Laws 2013, LB361, § 8; Laws 2022, LB741, § 54.
Effective date July 21, 2022.

(c) DOMESTIC ABUSE DEATHS

71-3412 Act, how cited.

Sections 71-3412 to 71-3421 shall be known and may be cited as the Domestic Abuse Death Review Act.

Source: Laws 2022, LB741, § 37.
Effective date July 21, 2022.

71-3413 Legislative findings and declarations; purpose of act.

(1) The Legislature finds and declares that it is in the best interests of the state, its residents, and especially the families of this state, that the number and causes of death related to domestic abuse be examined. There is a need for a comprehensive integrated review of all domestic abuse deaths in Nebraska and a system for statewide retrospective review of existing records relating to each domestic abuse death.

(2) The purpose of the Domestic Abuse Death Review Act is to prevent future domestic abuse deaths by:

(a) Providing for the examination of the incidence, causes, and contributing factors of domestic abuse deaths in Nebraska; and

(b) Developing recommendations for changes within communities, public and private agencies, institutions, and systems, based on an analysis of these causes and contributing factors which may serve to prevent future domestic abuse deaths.

Source: Laws 2022, LB741, § 38.
Effective date July 21, 2022.

71-3414 Terms, defined.

For purposes of the Domestic Abuse Death Review Act:

(1) Associated victim means a family or household member of the decedent victim who also experienced abuse committed by the perpetrator;

(2) Decedent victim means a person who died by homicide or suicide as a result of domestic abuse;

(3) Domestic abuse means abuse as defined in section 42-903;

(4) Domestic abuse death means:

(a) A homicide that involves, or is a result of, domestic abuse;

(b) The death of a decedent victim who was a member of a law enforcement agency, emergency medical service, or other agency responding to a domestic abuse incident;

(c) The death of a decedent victim who was responding to a domestic abuse incident; or

(d) A suicide of a decedent victim if there are circumstances indicating the suicide involved, or was the result of, domestic abuse within two years prior to the suicide, including: (i) The decedent victim had applied for or received a protection order against the perpetrator within two years prior to the suicide; (ii) the decedent victim had received counseling, treatment, or sought other supportive services as a result of the domestic abuse within two years prior to the suicide; or (iii) the decedent victim had reported domestic abuse to law enforcement within two years prior to the suicide;

(5) Family or household member has the same meaning as in section 42-903;

(6) Investigation means a domestic abuse death investigation as described in section 71-3415;

(7) Law enforcement agency means the police department or town marshal in incorporated municipalities, the office of the county sheriff, and the Nebraska State Patrol;

(8) Perpetrator means the person who has been the predominant aggressor of domestic abuse;

(9) Survivor of domestic abuse means a person who is a current or prior victim of domestic abuse; and

(10) Team means the State Domestic Abuse Death Review Team as provided in section 71-3416.

Source: Laws 2022, LB741, § 39.
Effective date July 21, 2022.

71-3415 Domestic abuse death investigation.

(1) A domestic abuse death investigation shall involve a review of existing records, documents, and other information regarding the decedent victim and perpetrator from relevant agencies, professionals, providers of health care, and family and household members of the decedent victim or perpetrator. The records to be reviewed may include: Protection orders; dissolution, mediation, custody, and support agreements and related court records; medical records; mental health records; therapy records; autopsy reports; birth and death certificates; court records, including juvenile cases and dismissed criminal cases; social services records, including juvenile records; educational records;

emergency medical services records; Department of Correctional Services information and records; parole and probation information and records; and law enforcement agency investigative information and reports.

(2) Records shall not be made available to the team until the criminal or juvenile legal system response is completed due to:

(a) The death of the perpetrator;

(b) The criminal conviction or acquittal of the perpetrator and any codefendants;

(c) The conclusion of grand jury proceedings resulting in a no true bill;

(d) Adjudication in a juvenile court proceeding pursuant to subdivision (1), (2), or (4) of section 43-247;

(e) Completion of a criminal investigation in which the county attorney declines to file charges; or

(f) Completion of the investigation of the suicide of the decedent victim.

Source: Laws 2022, LB741, § 40.
Effective date July 21, 2022.

71-3416 State Domestic Abuse Death Review Team; members; terms; Attorney General; duties; not considered public body; expenses.

(1) The State Domestic Abuse Death Review Team is created.

(2) The Attorney General shall appoint the following members to the State Domestic Abuse Death Review Team:

(a) At least two survivors of domestic abuse;

(b) A representative who is an employee of a statewide coalition representing nonprofit organizations that have an affiliation agreement with the Department of Health and Human Services to provide services to victims of domestic abuse under the Protection from Domestic Abuse Act;

(c) A representative who is an employee of a nonprofit organization that primarily provides services and support to victims of domestic abuse in metropolitan areas;

(d) A representative who is an employee of a nonprofit organization that primarily provides services and support to victims of domestic abuse in rural areas;

(e) A representative who is an employee of child advocacy centers;

(f) A representative who is a member of a federally recognized Indian tribe residing within the State of Nebraska with preference given to a person with experience in domestic abuse;

(g) A licensed physician or nurse with experience in forensics who is knowledgeable concerning domestic abuse injuries and deaths in Nebraska;

(h) A licensed mental health professional who is knowledgeable concerning domestic abuse in Nebraska;

(i) An officer of a law enforcement agency from a metropolitan jurisdiction with experience investigating domestic abuse in Nebraska;

(j) An officer of a law enforcement agency from a rural jurisdiction with experience investigating domestic abuse in Nebraska;

(k) An active county attorney or active deputy county attorney with experience prosecuting domestic abuse cases in Nebraska;

(l) An attorney from the office of the Attorney General; and

(m) The team coordinator pursuant to subsection (4) of this section.

(3) The remaining members of the State Domestic Abuse Death Review Team shall be appointed as follows: (a) The Superintendent of Law Enforcement and Public Safety or designee shall appoint an employee representative of the Nebraska State Patrol; (b) the chief executive officer of the Department of Health and Human Services shall appoint an employee representative of the department; and (c) the probation administrator shall appoint an employee representative of the Office of Probation Administration.

(4) The Attorney General shall be responsible for the general administration of the activities of the team and shall employ or contract with a team coordinator to provide administrative support for the team.

(5) Members of the team appointed by the Attorney General shall serve four-year terms. The remaining members shall serve two-year terms.

(6) The team shall not be considered a public body for purposes of the Open Meetings Act. Members of the team shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(7) In appointing members to the team, the Attorney General shall consider persons working in and representing communities that are diverse with regard to race, ethnicity, immigration status, and English proficiency and shall include members from differing geographic regions of the state, including both rural and urban areas.

Source: Laws 2022, LB741, § 41.
Effective date July 21, 2022.

Cross References

Open Meetings Act, see section 84-1407.
Protection from Domestic Abuse Act, see section 42-901.

71-3417 Team; purpose; duties; powers; confidentiality.

(1) The purpose of the team shall be to prevent future domestic abuse deaths by:

(a) Conducting investigations to understand the contributing factors in domestic abuse deaths;

(b) Examining the incidence, causes, and contributing factors of domestic abuse deaths; and

(c) Developing recommendations for changes within communities, public and private agencies, institutions, and systems, based on an analysis of the causes and contributing factors of domestic abuse deaths.

(2) The team shall:

(a) Develop protocols for investigations and to maintain the confidentiality of information made available to the team;

(b) Meet a minimum of four times per year and upon the call of the team coordinator selected under section 71-3416, the request of a state agency, or as determined by a majority of the team;

(c) Provide the Governor, the Legislature, and the Attorney General with an annual electronic report on or before August 15 each year beginning with the fiscal year ending June 30, 2024. The report shall not contain personal identifying information of any decedent victim, associated victim, or perpetrator. The report shall be available to the public and include the following:

(i) The causes, manner, and contributing factors of domestic abuse deaths in Nebraska, including trends and patterns and an analysis of information obtained through investigations; and

(ii) Recommendations regarding the prevention of future domestic abuse deaths for changes within communities, public and private agencies, institutions, and systems, based on an analysis of such causes and contributing factors. Such recommendations shall include recommended changes to laws, rules and regulations, policies, training needs, or service gaps to prevent future domestic abuse deaths;

(d) When appropriate, advise and consult with relevant agencies and organizations represented on the team or involved in domestic abuse deaths regarding the recommendations to prevent future domestic abuse deaths; and

(e) When appropriate, educate the public regarding the incidence of domestic abuse deaths, the public role in preventing domestic abuse deaths, and specific steps the public can take to prevent domestic abuse deaths. The team may enlist the support of civic, philanthropic, and public service organizations in the performance of its educational duties.

(3) The team may invite other individuals to participate on the team on an ad hoc basis for a particular investigation. Such individuals may include those with expertise that would aid in the investigation and representatives from organizations or agencies that had contact with, or provided services to, the decedent victim or associated victim. If the domestic abuse death occurred on tribal lands or if the domestic abuse death involves a member of a federally recognized Indian tribe, additional agencies and tribal representatives may be invited to participate.

(4) The team shall require any person appearing before it to sign a confidentiality agreement to ensure that all the confidentiality provisions of section 71-3421 are satisfied.

(5) The team shall enter into confidentiality agreements with social service agencies, nonprofit organizations, and private agencies to obtain otherwise confidential information and to ensure that all confidentiality provisions of section 71-3421 are satisfied.

(6) The team may enter into consultation agreements with relevant experts to evaluate the information and records collected by the team. All of the confidentiality provisions of section 71-3421 shall apply to the activities of a consulting expert.

(7) The team may enter into written agreements with entities to provide for the secure storage of electronic data based on information and records collected by the team as part of an investigation, including data that contains personal or incident identifiers. Such agreements shall provide for the protection of the security and confidentiality of the information, including access limitations, storage, and destruction of the information. The confidentiality provisions of section 71-3421 shall apply to the activities of the data storage entity.

(8) The team may consult and share information with the State Child Death Review Team or the State Maternal Death Review Team when the decedent victim or any associated victim is also the subject of an investigation of a child death or investigation of a maternal death under the Child and Maternal Death Review Act. The confidentiality provisions of section 71-3421 and section 71-3411 shall apply to the sharing of information between these teams.

Source: Laws 2022, LB741, § 42.
Effective date July 21, 2022.

Cross References

Child and Maternal Death Review Act, see section 71-3417.

71-3418 Team coordinator; duties.

(1) The team coordinator selected under section 71-3416 shall (a) convene and lead meetings of the team and (b) ensure the team provides recommendations to prevent domestic abuse deaths.

(2) The team coordinator shall (a) gather, store, and distribute the necessary records and information for investigations made available to the team, (b) ensure timely notification of the team members of upcoming meetings, (c) ensure that all team reporting and data collection requirements are met, (d) oversee adherence to the review process established by the Domestic Abuse Death Review Act and the protocols developed by the team, and (e) perform such other duties as the team deems appropriate.

Source: Laws 2022, LB741, § 43.
Effective date July 21, 2022.

71-3419 Team; conduct investigations; requirements.

The team shall conduct investigations in accordance with best practices and shall review all relevant records and information in an investigation to understand the relationship between the decedent victim and the perpetrator in order to determine:

(1) Whether a correlation exists between certain events in the relationship and any escalation of abuse;

(2) The factors that contributed to the domestic abuse death;

(3) The public and private systemic response to the decedent victim, an associated victim, and the perpetrator; and

(4) Recommendations and actions that address the contributing factors in the domestic abuse death for change within individuals, communities, public and private agencies, institutions, and systems based on an analysis of the causes and contributing factors of domestic abuse deaths.

Source: Laws 2022, LB741, § 44.
Effective date July 21, 2022.

71-3420 Provision of information and records; subpoenas; contempt.

(1) For purposes of conducting an investigation, and as necessary to fulfill the purposes of the Domestic Abuse Death Review Act, the team shall be immediately provided the following upon request:

(a) Records, documents, or other information maintained by a health care provider, mental health provider, or other medical professional, including

medical records, mental health records, therapy records, and emergency medical services records; and

(b) All information and records maintained by any state agency, county or local government, political subdivision, school district, or public or private educational institution, including birth and death certificates; protection orders; dissolution, mediation, custody, and child support agreements; court records, including juvenile cases and dismissed criminal cases; law enforcement agency investigative information and reports; autopsy reports; educational records; Department of Correctional Services information and records; parole and probation information and records; and information and records of any social services agency, including juvenile records, that provided services to the decedent victim, an associated victim, or the perpetrator.

(2) Except as provided in section 71-3415, the Attorney General shall have the authority to issue subpoenas to compel production of any of the records and information specified in this section.

(3) Any failure to respond to such subpoena shall be certified by the Attorney General to the district court of Lancaster County for enforcement or punishment for contempt of court.

Source: Laws 2022, LB741, § 45.
Effective date July 21, 2022.

71-3421 Information and records; confidentiality; release; conditions; disclosure; limitations.

(1) All information and records acquired by the team in the exercise of its duties pursuant to the Domestic Abuse Death Review Act shall be confidential and exempt from disclosure except as provided in this section and section 71-3417. Statistical compilations of data or recommendations made by the team that do not contain any personal identifying information shall be public records.

(2) De-identified information and records obtained by the team may be released to a researcher, research organization, university, institution, or governmental agency for the purpose of conducting scientific, medical, or public health research upon proof of identity and execution of a confidentiality agreement as provided in this section and section 71-3417. Such release shall provide for a written agreement with the Attorney General providing protection of the security of the information, including access limitations, and the storage, destruction, and use of the information. The release of such information pursuant to this subsection shall not make otherwise confidential information a public record.

(3) Except as necessary to carry out the team's purposes and duties, members of the team and individuals attending a team meeting shall not disclose any discussion among team members at a meeting and shall not disclose any information prohibited from disclosure by this section.

(4) Members of a team and individuals attending a team meeting shall not testify in any civil, administrative, licensure, or criminal proceeding, including depositions, regarding information reviewed in or an opinion formed as a result of a team meeting. This subsection shall not be construed to prevent a person from testifying to information obtained independently of the team or that is public information.

(5) Conclusions, findings, recommendations, information, documents, and records of the team shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that conclusions, findings, recommendations, information, documents, and records otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of the team or are maintained by the team.

Source: Laws 2022, LB741, § 46.
Effective date July 21, 2022.

ARTICLE 35

RADIATION CONTROL AND RADIOACTIVE WASTE

(a) RADIATION CONTROL ACT

(a) RADIATION CONTROL ACT

71-3503 Terms, defined.

For purposes of the Radiation Control Act, unless the context otherwise requires:

(1) Radiation means ionizing radiation and nonionizing radiation as follows:

(a) Ionizing radiation means gamma rays, X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays but does not include sound or radio waves or visible, infrared, or ultraviolet light; and

(b) Nonionizing radiation means (i) any electromagnetic radiation which can be generated during the operations of electronic products to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment, other than ionizing electromagnetic radiation, and (ii) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment;

(2) Radioactive material means any material, whether solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material includes, but is not limited to, accelerator-produced material, byproduct material, naturally occurring material, source material, and special nuclear material;

(3) Radiation-generating equipment means any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation except devices which emit radiation only from radioactive material;

(4) Sources of radiation means any radioactive material, any radiation-generating equipment, or any device or equipment emitting or capable of emitting radiation or radioactive material;

(5) Undesirable radiation means radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the department;

(6) Person means any individual, corporation, partnership, limited liability company, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing;

(7) Registration means registration with the department pursuant to the Radiation Control Act;

(8) Department means the Department of Health and Human Services;

(9) Administrator means the administrator of radiation control designated pursuant to section 71-3504;

(10) Electronic product means any manufactured product, device, assembly, or assemblies of such products or devices which, during operation in an electronic circuit, can generate or emit a physical field of radiation;

(11) License means:

(a) A general license issued pursuant to rules and regulations adopted and promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing radioactive materials;

(b) A specific license, issued to a named person upon application filed with the department pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to the act, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing radioactive materials; or

(c) A license issued to a radon measurement specialist, radon mitigation specialist, radon measurement business, or radon mitigation business;

(12) Byproduct material means:

(a) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute byproduct material;

(c)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; or

(ii) Any material that (A) has been made radioactive by use of a particle accelerator and (B) is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The United States Nuclear Regulatory Commission, in consultation with the Administrator of the United States Environmental Protection Agency, the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of

radium-226 to the public health and safety or the common defense and security; and

(ii) Is extracted or converted after extraction for use in a commercial, medical, or research activity;

(13) Source material means:

(a) Uranium or thorium or any combination thereof in any physical or chemical form; or

(b) Ores which contain by weight one-twentieth of one percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material;

(14) Special nuclear material means:

(a) Plutonium, uranium 233, or uranium enriched in the isotope 233 or in the isotope 235 and any other material that the United States Nuclear Regulatory Commission pursuant to the provisions of section 51 of the federal Atomic Energy Act of 1954, as amended, determines to be special nuclear material but does not include source material; or

(b) Any material artificially enriched by any material listed in subdivision (14)(a) of this section but does not include source material;

(15) Users of sources of radiation means:

(a) Physicians using radioactive material or radiation-generating equipment for human use;

(b) Natural persons using radioactive material or radiation-generating equipment for education, research, or development purposes;

(c) Natural persons using radioactive material or radiation-generating equipment for manufacture or distribution purposes;

(d) Natural persons using radioactive material or radiation-generating equipment for industrial purposes; and

(e) Natural persons using radioactive material or radiation-generating equipment for any other similar purpose;

(16) Civil penalty means any monetary penalty levied on a licensee or registrant because of violations of statutes, rules, regulations, licenses, or registration certificates but does not include criminal penalties;

(17) Closure means all activities performed at a waste handling, processing, management, or disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of licensed operation;

(18) Decommissioning means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care;

(19) Disposal means the permanent isolation of low-level radioactive waste pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to such act;

(20) Generate means to produce low-level radioactive waste when used in relation to low-level radioactive waste;

(21) High-level radioactive waste means:

(a) Irradiated reactor fuel;

(b) Liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or the equivalent in a facility for reprocessing irradiated reactor fuel; and

(c) Solids into which such liquid wastes have been converted;

(22) Low-level radioactive waste means radioactive waste not defined as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (12)(b) of this section;

(23) Management of low-level radioactive waste means the handling, processing, storage, reduction in volume, disposal, or isolation of such waste from the biosphere in any manner;

(24) Source material mill tailings or mill tailings means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes;

(25) Source material milling means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material and source material mill tailings;

(26) Spent nuclear fuel means irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent nuclear fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies;

(27) Transuranic waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram;

(28) Licensed practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic medicine and surgery, or as an osteopathic physician;

(29) X-ray system means an assemblage of components for the controlled production of X-rays, including, but not limited to, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system;

(30) Licensed facility operator means any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the Department of Environment and Energy; and

(31) Deliberate misconduct means an intentional act or omission by a person that (a) would intentionally cause a licensee, registrant, or applicant for a license or registration to be in violation of any rule, regulation, or order of or any term, condition, or limitation of any license or registration issued by the department under the Radiation Control Act or (b) constitutes an intentional violation of a requirement, procedure, instruction, contract, purchase order, or

policy under the Radiation Control Act by a licensee, a registrant, an applicant for a license or registration, or a contractor or subcontractor of a licensee, registrant, or applicant for a license or registration.

Source: Laws 1963, c. 406, § 3, p. 1297; Laws 1975, LB 157, § 3; Laws 1978, LB 814, § 3; Laws 1984, LB 716, § 3; Laws 1987, LB 390, § 4; Laws 1989, LB 342, § 32; Laws 1990, LB 1064, § 17; Laws 1993, LB 121, § 434; Laws 1993, LB 536, § 83; Laws 1995, LB 406, § 42; Laws 1996, LB 1044, § 651; Laws 1996, LB 1201, § 1; Laws 2002, LB 93, § 12; Laws 2002, LB 1021, § 71; Laws 2005, LB 301, § 42; Laws 2006, LB 994, § 103; Laws 2007, LB296 § 566; Laws 2007, LB463, § 1209; Laws 2008, LB928, § 23; Laws 2012, LB794, § 1; Laws 2019, LB302, § 89.

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

ARTICLE 37
BRAIN INJURY ASSISTANCE ACT

Section
71-3701. Act, how cited.
71-3702. Terms, defined.
71-3703. Brain Injury Oversight Committee; created; members; terms; meetings; expenses.
71-3704. Committee; duties.
71-3705. Brain Injury Assistance Program; created; administration.
71-3706. Legislative intent.

71-3701 Act, how cited.

Sections 71-3701 to 71-3706 shall be known and may be cited as the Brain Injury Assistance Act.

Source: Laws 2019, LB481, § 1; Laws 2022, LB971, § 1.
Effective date July 21, 2022.

71-3702 Terms, defined.

For purposes of the Brain Injury Assistance Act:

(1) Brain injury has the definition found in section 81-654; and

(2) Committee means the Brain Injury Oversight Committee created in section 71-3703.

Source: Laws 2019, LB481, § 2; Laws 2022, LB971, § 2.
Effective date July 21, 2022.

71-3703 Brain Injury Oversight Committee; created; members; terms; meetings; expenses.

(1) The Brain Injury Oversight Committee is created. The committee shall consist of nine public members and the following directors, or their designees: The Commissioner of Education; the Director of Behavioral Health of the Department of Health and Human Services; and the Director of Public Health of the Department of Health and Human Services. The Governor shall appoint the nine public members which shall include individuals with a brain injury or family members of individuals with a brain injury, a representative of a public

or private health-related organization, a representative of a developmental disability advisory or planning group within Nebraska, a representative of service providers for individuals with a brain injury, and a representative of a nonprofit brain injury advocacy organization.

(2) The Governor shall appoint the public members within ninety days after July 15, 2020. The Governor shall designate the initial terms so that three members serve one-year terms, three members serve two-year terms, and three members serve three-year terms. Their successors shall be appointed for four-year terms. Any vacancy shall be filled from the same category for the remainder of the unexpired term. Any member of the committee shall be eligible for reappointment. At least one member of the committee shall be appointed from each congressional district.

(3) The committee shall select a chairperson and such other officers as it deems necessary to perform its functions and shall establish policies to govern its procedures. The committee shall meet at least four times annually, and at any other time as the business of the committee requires, and shall meet at such place as may be established by the chairperson. The public members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2019, LB481, § 3.

71-3704 Committee; duties.

The committee shall:

(1) Provide financial oversight and direction to the University of Nebraska Medical Center in the management of the Brain Injury Assistance Program;

(2) Develop criteria for expenditures from the Brain Injury Assistance Program; and

(3) Represent the interests of individuals with a brain injury and their families through advocacy, education, training, rehabilitation, research, and prevention.

Source: Laws 2019, LB481, § 4; Laws 2022, LB971, § 3.
Effective date July 21, 2022.

71-3705 Brain Injury Assistance Program; created; administration.

(1) The Brain Injury Assistance Program is created. The program shall be administered by the Department of Health and Human Services through a contract with the University of Nebraska Medical Center. The program shall provide assistance for individuals with a brain injury by paying for contracts with outside sources that specialize in the area of brain injury. Such outside sources shall operate, at a minimum, statewide, and also in targeted areas as defined and determined in the contract, with individuals with a brain injury; work to secure and develop community-based services for individuals with a brain injury; provide support groups and access to pertinent information, medical resources, and service referrals for individuals with a brain injury; and educate professionals who work with individuals with a brain injury.

(2) The program may provide assistance with the following activities, including, but not limited to:

(a) Resource facilitation. Resource facilitation shall be given priority and made available to provide ongoing support for individuals with a brain injury

and their families for coping with brain injuries. Resource facilitation may provide a linkage to existing services and increase the capacity of the state's providers of services to individuals with a brain injury by providing brain-injury-specific information, support, and resources and enhancing the usage of support commonly available in a community. Agencies providing resource facilitation shall specialize in providing services to individuals with a brain injury and their families;

(b) Voluntary training for service providers in the appropriate provision of services to individuals with a brain injury;

(c) Followup contact to provide information on brain injuries for individuals on the brain injury registry established in the Brain Injury Registry Act;

(d) Activities to promote public awareness of brain injury and prevention methods;

(e) Supporting research in the field of brain injury;

(f) Providing and monitoring quality improvement processes with standards of care among brain injury service providers; and

(g) Collecting data and evaluating how the needs of individuals with a brain injury and their families are being met in this state.

(3) Administration costs of the program shall not be more than ten percent of the total expenditures of the program.

(4) Data collection and evaluation conducted pursuant to this section shall not be a burden or unnecessary hardship to individuals with a brain injury or service providers.

(5) Nothing in this section shall require a professional, provider, caregiver, or individual to receive training as a condition of receiving or providing nonmedical services to individuals with a brain injury.

Source: Laws 2019, LB481, § 5; Laws 2022, LB971, § 4.
Effective date July 21, 2022.

Cross References

Brain Injury Registry Act, see section 81-653.

71-3706 Legislative intent.

It is the intent of the Legislature to appropriate five hundred thousand dollars from the Nebraska Health Care Cash Fund annually beginning in fiscal year 2020-21 to the Brain Injury Assistance Program for purposes of carrying out the Brain Injury Assistance Act.

Source: Laws 2019, LB481, § 6; Laws 2022, LB971, § 5.
Effective date July 21, 2022.

ARTICLE 42
STROKE SYSTEM OF CARE ACT

Section
71-4201. Act, how cited.
71-4210. Statewide stroke data registry; data collection and release; powers and duties.

71-4201 Act, how cited.

Sections 71-4201 to 71-4210 shall be known and may be cited as the Stroke System of Care Act.

Source: Laws 2016, LB722, § 1; Laws 2021, LB476, § 1.

71-4210 Statewide stroke data registry; data collection and release; powers and duties.

(1) The department in conjunction with the stroke system of care task force shall establish and implement an improvement plan for a comprehensive stroke system for stroke response and treatment. The department shall:

(a) Maintain a statewide stroke data registry that utilizes the American Heart Association's Get with the Guidelines stroke data set or a data tool with equivalent data measures and with confidentiality standards consistent with federal and state law and other health information and data collection, storage, and sharing requirements of the department;

(b) Require comprehensive stroke centers, thrombectomy-capable stroke centers, and primary stroke centers, and encourage other hospitals and emergency medical services, to report data consistent with nationally recognized guidelines on the treatment of individuals with a suspected stroke and transient ischemic attack within the state;

(c) Encourage sharing of information and data among health care providers on ways to improve the quality of care for stroke patients within the state; and

(d) Facilitate the communication and analysis of health information and data among health care professionals who provide care for stroke patients.

(2) The department shall establish a data oversight process for stroke response and treatment. The department shall provide for (a) the analysis of data generated by the stroke registry on stroke response and treatment and (b) the identification of potential interventions to improve stroke care in geographic areas or regions of the state.

(3) All data and information developed or collected pursuant to the Stroke System of Care Act registry and the receipt and release of data from the Stroke System of Care Act registry is subject to and shall comply with sections 81-663 to 81-675. For purposes of the Stroke System of Care Act registry, data may be released as Class I data, Class II data, Class III data, or Class IV data as classified in section 81-667.

Source: Laws 2021, LB476, § 2.

ARTICLE 43

SWIMMING POOLS

Section
71-4301. Transferred to section 81-15,264.
71-4302. Transferred to section 81-15,265.
71-4303. Transferred to section 81-15,266.
71-4304. Transferred to section 81-15,267.
71-4305. Transferred to section 81-15,268.
71-4306. Transferred to section 81-15,269.
71-4307. Transferred to section 81-15,270.

71-4301 Transferred to section 81-15,264.

71-4302 Transferred to section 81-15,265.

71-4303 Transferred to section 81-15,266.

71-4304 Transferred to section 81-15,267.

71-4305 Transferred to section 81-15,268.

71-4306 Transferred to section 81-15,269.

71-4307 Transferred to section 81-15,270.

ARTICLE 44
RABIES

Section
71-4401. Terms, defined.
71-4402.01. Repealed. Laws 2019, LB61, § 7.
71-4402.03. Control and prevention of rabies; rules and regulations.
71-4403. Veterinarian; vaccination for rabies; certificate; contents.
71-4406. Post-incident management.
71-4407. Domestic or hybrid animal or livestock; postexposure management.

71-4401 Terms, defined.

For purposes of sections 71-4401 to 71-4412, unless the context otherwise requires:

(1) Compendium means the Compendium of Animal Rabies Prevention and Control as published by the National Association of State Public Health Veterinarians;

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

(3) Domestic animal means any dog of the species Canis familiaris, cat of the species Felis domesticus, or ferret of the species Mustela putorius furo, and cat means a cat which is a household pet;

(4) Hybrid animal means any animal which is the product of the breeding of a domestic dog with a nondomestic canine species;

(5) Own, unless otherwise specified, means to possess, keep, harbor, or have control of, charge of, or custody of a domestic or hybrid animal. This term does not apply to domestic or hybrid animals owned by other persons which are temporarily maintained on the premises of a veterinarian or kennel operator for a period of not more than thirty days;

(6) Owner means any person possessing, keeping, harboring, or having charge or control of any domestic or hybrid animal or permitting any domestic or hybrid animal to habitually be or remain on or be lodged or fed within such person's house, yard, or premises. This term does not apply to veterinarians or kennel operators temporarily maintaining on their premises domestic or hybrid animals owned by other persons for a period of not more than thirty days;

(7) Rabies control authority means county, township, city, or village health and law enforcement officials who shall enforce sections 71-4401 to 71-4412 relating to the vaccination and impoundment of domestic or hybrid animals. Such public officials are not responsible for any accident or disease of a domestic or hybrid animal resulting from the enforcement of such sections; and

(8) Vaccination against rabies means the inoculation of a domestic or hybrid animal with a United States Department of Agriculture-licensed rabies vaccine administered consistent with its labeling. Such vaccination shall be performed by a veterinarian duly licensed to practice veterinary medicine in the State of Nebraska or licensed in the state where the vaccination was administered.

Source: Laws 1969, c. 445, § 1, p. 1484; Laws 1987, LB 104, § 1; Laws 1996, LB 1044, § 674; Laws 2000, LB 1115, § 75; Laws 2007, LB25, § 1; Laws 2007, LB296, § 585; Laws 2019, LB61, § 1.

71-4402.01 Repealed. Laws 2019, LB61, § 7.

71-4402.03 Control and prevention of rabies; rules and regulations.

To protect the health, safety, and welfare of the public and to ensure, to the greatest extent possible, efficient and adequate practices, the department shall adopt and promulgate rules and regulations for the control and prevention of rabies. Such rules and regulations shall generally comply with the compendium and the recommendations of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services. The department may consider changes in the compendium and recommendations of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services when adopting and promulgating such rules and regulations.

Source: Laws 2007, LB25, § 4; Laws 2019, LB61, § 2.

71-4403 Veterinarian; vaccination for rabies; certificate; contents.

It shall be the duty of each veterinarian, at the time of vaccinating any domestic or hybrid animal, to complete a certificate of rabies vaccination which shall include, but not be limited to, the following information:

(1) The owner's name and address;

(2) An adequate description of the domestic or hybrid animal, including, but not limited to, such items as the domestic or hybrid animal's breed, sex, age, name, and distinctive markings;

(3) The date of vaccination;

(4) The rabies vaccination tag number;

(5) The type of rabies vaccine administered by dosage and number of years of effectiveness;

(6) The manufacturer's serial number of the vaccine used; and

(7) The date by which the next vaccination is due.

Such veterinarian shall issue a tag with the certificate of vaccination.

Source: Laws 1969, c. 445, § 3, p. 1485; Laws 1987, LB 104, § 3; Laws 2007, LB25, § 5; Laws 2019, LB61, § 3.

71-4406 Post-incident management.

Any domestic animal which has bitten any person or caused an abrasion of the skin of any person shall be subjected to post-incident management as provided in rules and regulations adopted and promulgated by the department.

Source: Laws 1969, c. 445, § 6, p. 1486; Laws 1987, LB 104, § 6; Laws 1989, LB 51, § 1; Laws 2007, LB25, § 8; Laws 2019, LB61, § 4.

71-4407 Domestic or hybrid animal or livestock; postexposure management.

Domestic or hybrid animals or livestock known to have been exposed to a confirmed or suspected rabid animal shall be subjected to postexposure management as provided in rules and regulations adopted and promulgated by the department.

Source: Laws 1969, c. 445, § 7, p. 1487; Laws 1987, LB 104, § 7; Laws 2007, LB25, § 9; Laws 2019, LB61, § 5.

ARTICLE 45

PALLIATIVE CARE AND QUALITY OF LIFE ACT

Section
71-4504. Palliative Care and Quality of Life Advisory Council; created; duties; members; meetings; expenses.

71-4504 Palliative Care and Quality of Life Advisory Council; created; duties; members; meetings; expenses.

(1) The Palliative Care and Quality of Life Advisory Council is created. The council shall consult with and advise the Department of Health and Human Services on matters relating to palliative care initiatives. The council shall:

(a) Survey palliative care providers regarding best practices and recommendations;

(b) Work with the department; and

(c) Make recommendations to the department regarding information on the website pursuant to section 71-4503 as standards of care change.

(2) The council shall be composed of nine members appointed by the Governor for three-year terms. At least two of the members shall be physicians or nurses certified under the Hospice and Palliative Medicine Certification Program administered by the American Board of Internal Medicine. One member shall be an employee of the department familiar with hospice and palliative medicine. The remaining members shall (a) have palliative care work experience, (b) have experience with palliative care delivery models in a variety of settings, such as acute care, long-term care, and hospice care, and with a variety of populations, including pediatric patients, youth patients, and adult patients, or (c) be representatives of palliative care patients and their family caregivers.

(3) The council shall meet at least twice each calendar year. The members shall elect a chairperson and vice-chairperson. The members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177 but shall not receive any other compensation for such services.

(4) The department shall provide a place and time for the council to meet and provide staffing assistance as necessary for the meetings.

Source: Laws 2017, LB323, § 4; Laws 2020, LB381, § 65.

ARTICLE 46

MANUFACTURED HOMES, RECREATIONAL VEHICLES, AND MOBILE HOME PARKS

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

Section
71-4603. Terms, defined.

(b) MOBILE HOME PARKS

71-4621. Transferred to section 81-15,279.
71-4622. Transferred to section 81-15,280.
71-4623. Transferred to section 81-15,281.
71-4624. Transferred to section 81-15,282.
71-4625. Transferred to section 81-15,283.
71-4626. Transferred to section 81-15,284.
71-4627. Transferred to section 81-15,285.

Section
71-4629. Transferred to section 81-15,286.
71-4630. Transferred to section 81-15,287.
71-4631. Transferred to section 81-15,288.
71-4632. Transferred to section 81-15,289.
71-4633. Transferred to section 81-15,290.
71-4634. Transferred to section 81-15,278.
71-4635. Transferred to section 81-15,291.

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

71-4603 Terms, defined.

For purposes of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, unless the context otherwise requires:

(1) Camping trailer means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use;

(2) Commission means the Public Service Commission;

(3) Dealer means a person licensed by the state pursuant to the Motor Vehicle Industry Regulation Act as a dealer in manufactured homes or recreational vehicles or any other person, other than a manufacturer, who sells, offers to sell, distributes, or leases manufactured homes or recreational vehicles primarily to persons who in good faith purchase or lease a manufactured home or recreational vehicle for purposes other than resale;

(4) Defect means a failure to conform to an applicable construction standard that renders the manufactured home or recreational vehicle or any component of the manufactured home or recreational vehicle not fit for the ordinary use for which it was intended but does not result in an unreasonable risk of injury or death to occupants;

(5) Distributor means any person engaged in the sale and distribution of manufactured homes or recreational vehicles for resale;

(6) Failure to conform means a defect, a serious defect, noncompliance, or an imminent safety hazard related to the code;

(7) Fifth-wheel trailer means a unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle;

(8) Gross trailer area means the total plan area measured on the exterior to the maximum horizontal projections of exterior wall in the setup mode and includes all siding, corner trims, moldings, storage spaces, expandable room sections regardless of height, and areas enclosed by windows but does not include roof overhangs. Storage lofts contained within the basic unit shall have ceiling heights less than five feet and shall not constitute additional square footage. Appurtenances, as defined in subdivision (2)(k) of section 60-6,288, shall not be considered in calculating the gross trailer area as provided in such subdivision;

(9) Imminent safety hazard means a hazard that presents an imminent and unreasonable risk of death or severe personal injury;

(10) Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, except that manufactured home includes any structure that meets all of the requirements of this subdivision other than the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, as such act existed on September 1, 2001, 42 U.S.C. 5401 et seq.;

(11) Manufactured-home construction means all activities relating to the assembly and manufacture of a manufactured home, including, but not limited to, activities relating to durability, quality, and safety;

(12) Manufactured-home safety means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;

(13) Manufacturer means any person engaged in manufacturing, assembling, or completing manufactured homes or recreational vehicles;

(14) Motor home means a vehicular unit primarily designed to provide temporary living quarters which are built into an integral part of, or permanently attached to, a self-propelled motor vehicle chassis or van, containing permanently installed independent life-support systems that meet the state standard for recreational vehicles and providing at least four of the following facilities: Cooking; refrigeration or ice box; self-contained toilet; heating, air conditioning, or both; a potable water supply system including a faucet and sink; separate one-hundred-twenty-nominal-volt electrical power supply; or LP gas supply;

(15) Noncompliance means a failure to comply with an applicable construction standard that does not constitute a defect, a serious defect, or an imminent safety hazard;

(16) Park model recreational vehicle means a vehicular unit which meets the following criteria:

(a) Is designed and marketed as temporary living quarters for recreational, camping, travel, or seasonal use;

(b) Is not permanently affixed to real property for use as a permanent dwelling;

(c) Is built on a single chassis mounted on wheels with a gross trailer area not exceeding four hundred square feet in the set up mode; and

(d) Is certified by the manufacturer as complying with the ANSI A119.5 Park Model Recreational Vehicle Standard of the American National Standards Institute, 2020 edition;

(17) Person means any individual, partnership, limited liability company, company, corporation, or association engaged in manufacturing, selling, offering to sell, or leasing manufactured homes or recreational vehicles;

(18) Purchaser means the first person purchasing a manufactured home or recreational vehicle in good faith for purposes other than resale;

(19) Recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which unit either has its own motive power or is mounted on or towed by another vehicle. Recreational vehicle includes, but is not limited to, travel trailer, park model recreational vehicle, camping trailer, truck camper, motor home, and van conversion;

(20) Seal means a device or insignia issued by the Department of Health and Human Services Regulation and Licensure prior to May 1, 1998, or by the Public Service Commission on or after May 1, 1998, to be displayed on the exterior of a manufactured home or recreational vehicle to evidence compliance with state standards. The federal manufactured-home label shall be recognized as a seal;

(21) Serious defect means a failure to conform to an applicable construction standard that renders the manufactured home or recreational vehicle or any component of the manufactured home or recreational vehicle not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to the occupants;

(22) Travel trailer means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use of such size or weight as not to require special highway movement permits when towed by a motorized vehicle;

(23) Truck camper means a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides and designed to be loaded onto and unloaded from the bed of a pickup truck; and

(24) Van conversion means a completed vehicle permanently altered cosmetically, structurally, or both which has been recertified by the state as a multipurpose passenger vehicle but which does not conform to or otherwise meet the definition of a motor home in this section and which contains at least one plumbing, heating, or one-hundred-twenty-nominal-volt electrical component subject to the provisions of the state standard for recreational vehicles. Van conversion does not include any such vehicle that lacks any plumbing, heating, or one-hundred-twenty-nominal-volt electrical system but contains an extension of the low-voltage automotive circuitry.

Source: Laws 1969, c. 557, § 3, p. 2272; Laws 1975, LB 300, § 3; Laws 1985, LB 313, § 7; Laws 1993, LB 121, § 435; Laws 1993, LB 536, § 86; Laws 1996, LB 1044, § 675; Laws 1998, LB 1073, § 128; Laws 2001, LB 376, § 6; Laws 2008, LB797, § 13; Laws 2010, LB816, § 90; Laws 2012, LB751, § 48; Laws 2022, LB1147, § 1.
Effective date April 19, 2022.

Cross References

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

(b) MOBILE HOME PARKS

71-4621 Transferred to section 81-15,279.

71-4622 Transferred to section 81-15,280.

71-4623 Transferred to section 81-15,281.

71-4624 Transferred to section 81-15,282.

71-4625 Transferred to section 81-15,283.

71-4626 Transferred to section 81-15,284.

71-4627 Transferred to section 81-15,285.

71-4629 Transferred to section 81-15,286.

71-4630 Transferred to section 81-15,287.

71-4631 Transferred to section 81-15,288.

71-4632 Transferred to section 81-15,289.

71-4633 Transferred to section 81-15,290.

71-4634 Transferred to section 81-15,278.

71-4635 Transferred to section 81-15,291.

ARTICLE 47

HEARING

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

Section

(d) LANGUAGE ASSESSMENT PROGRAM

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

71-4720 Commission for the Deaf and Hard of Hearing; created; members; appointment; qualifications.

There is hereby created the Commission for the Deaf and Hard of Hearing which shall consist of nine members to be appointed by the Governor subject to approval by the Legislature. The commission members shall include three deaf persons, three hard of hearing persons, and three persons who have an interest in and knowledge of deafness and hearing loss issues. A majority of the commission members who are deaf or hard of hearing shall be able to express themselves through sign language. Employees of any state agency other than employees of the commission shall be eligible to serve on the commission.

When appointing members to the commission, the Governor shall consider recommendations from individuals, organizations, and the public.

Source: Laws 1979, LB 101, § 1; Laws 1981, LB 250, § 1; Laws 1987, LB 376, § 16; Laws 1995, LB 25, § 1; Laws 1997, LB 851, § 12; Laws 2019, LB248, § 6.

71-4723 Members; expenses.

The members of the commission shall receive no compensation for their services as such but shall be reimbursed for expenses in attending meetings of the commission and in carrying out their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1979, LB 101, § 4; Laws 1981, LB 204, § 131; Laws 2020, LB381, § 66.

71-4728.05 Interpreter Review Board; members; duties; expenses.

(1) The commission shall appoint the Interpreter Review Board as required in section 20-156.

(2) Members of the Interpreter Review Board shall be as follows:

(a) A representative of the Department of Health and Human Services and the executive director of the commission or his or her designee, both of whom shall serve continuously and without limitation;

(b) One qualified interpreter, appointed for a term to expire on June 30, 2008;

(c) One representative of local government, appointed for a term to expire on June 30, 2008;

(d) One deaf or hard of hearing person, appointed for a term to expire on June 30, 2009;

(e) One qualified interpreter, appointed for a term to expire on June 30, 2009;

(f) One deaf or hard of hearing person, appointed for a term to expire on June 30, 2010; and

(g) One representative of local government, appointed for a term to expire on June 30, 2010.

(3) Upon the expiration of the terms described in subsection (2) of this section, members other than those identified in subdivision (2)(a) of this section shall be appointed for terms of three years. No such member may serve more than two consecutive three-year terms beginning June 30, 2007, except that members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(4) The commission may remove a member of the board for inefficiency, neglect of duty, or misconduct in office after delivering to such member a copy of the charges and a public hearing in accordance with the Administrative Procedure Act. If a vacancy occurs on the board, the commission shall appoint another member with the same qualifications as the vacating member to serve the remainder of the term. The members of the board shall receive no compensation but shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177 in attending meetings of the commission and in carrying out their official duties as provided in this section and section 20-156.

(5) The board shall establish policies, standards, and procedures for evaluating and licensing interpreters, including, but not limited to, testing, training, issuance, renewal, and denial of licenses, continuing education and continuing competency assessment, investigation of complaints, and disciplinary actions against a license pursuant to section 20-156.

Source: Laws 2002, LB 22, § 17; Laws 2006, LB 87, § 5; Laws 2007, LB296, § 590; Laws 2020, LB381, § 67.

Cross References

Administrative Procedure Act, see section 84-920.

(d) LANGUAGE ASSESSMENT PROGRAM

71-4745 Terms, defined.

For purposes of sections 71-4745 to 71-4747:

(1) Communication means a two-way, interactive process to convey meaning from one person or group to another through the use of mutually understood signs, symbols, or voice;

(2) Credentialed teacher of the deaf means a certificated teacher with a special education endorsement in deaf or hard of hearing education;

(3) English means English literacy, spoken English, signing exact English and morphemic system of signs, conceptually accurate signed English, cued speech, and any other visual supplements;

(4) Language means a complex and dynamic system of conventional symbols that is used in various modes for thought and communication; and

(5) Literacy includes the developmental stages of literacy, which are necessary beginning stages to master a language and which include pre-emergent, emergent, and novice levels.

Source: Laws 2020, LB965, § 4.

71-4746 Language assessment program; children from birth through five years of age; scope; report.

(1) The State Department of Education, in collaboration with the Commission for the Deaf and Hard of Hearing, shall establish and coordinate a language assessment program for children who are deaf or hard of hearing. The program shall assess, monitor, and track the language developmental milestones for children from birth through five years of age who are deaf or hard of hearing. The scope of the program shall include children who use one or more communication modes in American Sign Language, English literacy, and, if applicable, spoken English and visual supplements.

(2) Language assessments shall be given as needed to each child who is deaf or hard of hearing and who is less than six years of age in compliance with the Special Education Act and the federal Individuals with Disabilities Education Act, as such act existed on January 1, 2020. Such language assessments shall be provided in accordance with the provisions of this section and any recommendations adopted pursuant to this section.

(3) On or before December 31, 2022, and on or before each December 31 thereafter, the State Department of Education and the Commission for the Deaf and Hard of Hearing shall publish a joint report that is specific to language and

literacy developmental milestones for each age from birth through five years of age of children who are deaf or hard of hearing, including children who are deaf or hard of hearing and have another disability, relative to such children's peers who are not deaf or hard of hearing. Such report shall be based on existing data annually reported by the State Department of Education in compliance with the federally required state performance plan on pupils with disabilities. The State Department of Education and the Commission for the Deaf and Hard of Hearing shall each publish the report on their respective websites. The report shall be electronically submitted to the Education Committee of the Legislature and the Clerk of the Legislature.

Source: Laws 2020, LB965, § 5.

Cross References

Special Education Act, see section 79-1110.

71-4747 Advisory committee; members; meetings; quorum; duties; termination.

(1) The Commission for the Deaf and Hard of Hearing shall appoint an advisory committee to advise the commission regarding all aspects of the language assessment program established pursuant to section 71-4746. The advisory committee shall consist of fourteen members as follows:

(a) One member shall be a credentialed teacher of the deaf who uses both American Sign Language and English during instruction;

(b) One member shall be a credentialed teacher of the deaf who uses spoken English, with or without visual supplements, during instruction;

(c) One member shall be a credentialed teacher of the deaf who has expertise in curriculum development and instruction for American Sign Language and English;

(d) One member shall be a credentialed teacher of the deaf who has expertise in assessing language development in both American Sign Language and English;

(e) One member shall be a speech language pathologist who has experience working with children from birth through five years of age;

(f) One member shall be a professional with a linguistic background who conducts research on language outcomes of children who are deaf or hard of hearing and who uses both American Sign Language and English;

(g) One member shall be a parent of a child who is deaf or hard of hearing and who uses both American Sign Language and English;

(h) One member shall be a parent of a child who is deaf or hard of hearing and who uses spoken English with or without visual supplements;

(i) One member shall be knowledgeable about teaching and using both American Sign Language and English in the education of children who are deaf or hard of hearing;

(j) One member shall be a community member representing the deaf community;

(k) One member shall be a community member representing the hard of hearing community;

(l) One member shall be the state liaison for any regional programs for the education of children who are deaf or hard of hearing, coordinated through the State Department of Education, or the state liaison's designee;

(m) One member shall be a member of the Commission for the Deaf and Hard of Hearing; and

(n) One member shall be the coordinator of a network that provides service coordination for children with special needs who are below three years of age or the coordinator's designee.

(2) On or before December 30, 2020, the executive director of the Commission for the Deaf and Hard of Hearing shall call an organizational meeting of the advisory committee. At such organizational meeting, the members shall elect a chairperson and vice-chairperson from the membership of the advisory committee. The advisory committee may meet at any time and at any place within the state on the call of the chairperson. A quorum of the advisory committee shall be six members. All actions of the advisory committee shall be by motion adopted by a majority of those members present when there is a quorum.

(3) On or before July 1, 2022, the advisory committee shall develop specific action plans and make recommendations necessary to fully implement the language assessment program. The advisory committee shall:

(a) Collaborate with the coordinating council for a network that provides service coordination for children with special needs who are below three years of age and an advisory council that provides policy guidance to the State Department of Education;

(b) Solicit input from professionals trained in the language development and education of children who are deaf or hard of hearing on the selection of specific language developmental milestones;

(c) Review and recommend the use of existing and available language assessments for children who are deaf or hard of hearing;

(d) Recommend qualifications for identifying language professionals with knowledge of the use of evidence-based, best practices in English and American Sign Language who can be available to advocate at individualized family service plan or individualized education program team meetings;

(e) Recommend qualifications for identifying language assessment evaluators with knowledge of the use of evidence-based, best practices with children who are deaf or hard of hearing and the resources for locating such evaluators; and

(f) Recommend procedures and methods for communicating information on language acquisition, assessment results, milestones, assessment tools used, and progress of the child to the parent or legal guardian of such child and the teachers and other professionals involved in the early intervention and education of such child.

(4) The specific action plans and recommendations developed by the advisory committee shall include, but are not limited to, the following:

(a) Language assessments that include data collection and timely tracking of the child's development so as to provide information about the child's receptive and expressive language compared to such child's linguistically age-appropriate peers who are not deaf or hard of hearing;

(b) Language assessments conducted in accordance with standardized norms and timelines in order to monitor and track language developmental milestones in receptive, expressive, social, and pragmatic language acquisition and developmental stages to show progress in American Sign Language literacy, English literacy, or both, for all children from birth through five years of age who are deaf or hard of hearing;

(c) Language assessments delivered in the child's mode of communication and which have been validated for the specific purposes for which each assessment is used, and appropriately normed;

(d) Language assessments administered by individuals who are proficient in American Sign Language for American Sign Language assessments and English for English assessments;

(e) Use of assessment results, in addition to the results of the assessment required by federal law, for guidance in the language developmental discussions by individualized family service plan or individualized education program team meetings when assessing the child's progress in language development;

(f) Reporting of assessment results to the parents or legal guardian of the child and any applicable agency;

(g) Reporting of assessment results on an aggregated basis to the Education Committee of the Legislature, the Clerk of the Legislature, and the Governor; and

(h) Reporting of assessment results to the members of the child's individualized family service plan or individualized education program team, which assessment results may be used, in addition to the results of the assessment required by federal law, by the child's individualized family service plan or individualized education program team, as applicable, to track the child's progress, and to establish or modify the individualized family service plan or individualized education program.

(5) The advisory committee appointed pursuant to this section shall terminate on July 1, 2022.

Source: Laws 2020, LB965, § 6.

ARTICLE 48

ANATOMICAL GIFTS

(c) BONE MARROW DONATIONS

Section

(d) DONOR REGISTRY OF NEBRASKA

(c) BONE MARROW DONATIONS

71-4819 Department of Health and Human Services; education regarding bone marrow donors; powers and duties.

(1) The Department of Health and Human Services shall educate residents of the state about:

(a) The need for bone marrow donors;

(b) Patient populations benefiting from bone marrow donations;

(c) How to acquire a free buccal swab kit from a bone marrow registry;

(d) The procedures required to become registered as a potential bone marrow donor, including the procedures for determining tissue type; and

(e) The medical procedures a donor must undergo to donate bone marrow and the attendant risks of the procedures.

(2) The department shall provide information and educational materials to the public regarding bone marrow donation. The department shall seek assistance from the national marrow donor program to establish a system to distribute materials, ensure that the materials are updated periodically, and fully disclose the risks involved in donating bone marrow. The department shall make special efforts to educate and recruit persons of racial and ethnic minorities to volunteer as potential bone marrow donors.

(3) The department may use the press, radio, and television and may place educational materials in appropriate health care facilities, blood banks, and state and local agencies. The department, in conjunction with the Director of Motor Vehicles, shall make educational materials available at all places where motor vehicle operators' licenses are issued or renewed.

Source: Laws 1992, LB 1099, § 1; Laws 1996, LB 1044, § 685; Laws 2007, LB296, § 601; Laws 2020, LB541, § 1.

71-4821 Physician; inquire of new patient; provide information.

Each physician may inquire of a new patient who is at least eighteen years of age and younger than forty-five years of age on the new patient's intake form as to whether the patient is registered with the bone marrow registry. If the patient states that the patient is not registered with the bone marrow registry, the physician may provide information developed and disseminated by the Department of Health and Human Services regarding the bone marrow registry to the patient.

Source: Laws 2020, LB541, § 2.

(d) DONOR REGISTRY OF NEBRASKA

71-4822 Donor Registry of Nebraska; establishment; duties; restriction on information.

(1) The federally designated organ procurement organization for Nebraska shall use the information received from the Department of Motor Vehicles under section 60-494 and the Game and Parks Commission under section 37-406.01 to establish and maintain the Donor Registry of Nebraska. A procurement organization located outside of Nebraska may obtain information from the Donor Registry of Nebraska when a Nebraska resident is listed as a donor on the registry and is not located in Nebraska immediately preceding or at the time of his or her death. The federally designated organ procurement organization for Nebraska may receive donor information from sources other than the Department of Motor Vehicles and shall pay all costs associated with creating and maintaining the Donor Registry of Nebraska.

(2) It is the intent of the Legislature that the Donor Registry of Nebraska facilitate organ and tissue donations and not inhibit such donations. A person

does not need to be listed on the Donor Registry of Nebraska to be an organ and tissue donor.

(3) No person shall obtain information from the Donor Registry of Nebraska for the purpose of fundraising or other commercial use. Information obtained from the Donor Registry of Nebraska may only be used to facilitate the donation process at the time of the donor's death. General statistical information may be provided upon request to the federally designated organ procurement organization for Nebraska.

Source: Laws 2004, LB 559, § 7; Laws 2010, LB1036, § 39; Laws 2022, LB1082, § 3.
Effective date July 21, 2022.

ARTICLE 53

DRINKING WATER

(a) NEBRASKA SAFE DRINKING WATER ACT

(b) DRINKING WATER STATE REVOLVING FUND ACT

(a) NEBRASKA SAFE DRINKING WATER ACT

71-5301 Terms, defined.

For purposes of the Nebraska Safe Drinking Water Act, unless the context otherwise requires:

(1) Council means the Advisory Council on Public Water Supply;

(2) Department means the Department of Environment and Energy;

(3) Director means the Director of Environment and Energy or his or her authorized representative;

(4) Designated agent means any political subdivision or corporate entity having the demonstrated capability and authority to carry out in whole or in part the Nebraska Safe Drinking Water Act and with which the director has

consummated a legal and binding contract covering specifically delegated responsibilities;

(5) Major construction, extension, or alteration means those structural changes that affect the source of supply, treatment processes, or transmission of water to service areas but does not include the extension of service mains within established service areas;

(6) Operator means the individual or individuals responsible for the continued performance of the water supply system or any part of such system during assigned duty hours;

(7) Owner means any person owning or operating a public water system;

(8) Person means any individual, corporation, firm, partnership, limited liability company, association, company, trust, estate, public or private institution, group, agency, political subdivision, or other entity or any legal successor, representative, agent, or agency of any of such entities;

(9) Water supply system means all sources of water and their surroundings under the control of one owner and includes all structures, conduits, and appurtenances by means of which such water is collected, treated, stored, or delivered except service pipes between street mains and buildings and the plumbing within or in connection with the buildings served;

(10)(a) Public water system means a system for providing the public with water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per year. Public water system includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Public water system does not include a special irrigation district. A public water system is either a community water system or a noncommunity water system.

(b) Service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if (i) the water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, cooking, and other similar uses, (ii) the department determines that alternative water to achieve the equivalent level of public health protection provided by the Nebraska Safe Drinking Water Act and rules and regulations under the act is provided for residential or similar uses for drinking and cooking, or (iii) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the Nebraska Safe Drinking Water Act and the rules and regulations under the act.

(c) Special irrigation district means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use if the system or the residential or similar users of the system comply with exclusion provisions of subdivision (b)(ii) or (iii) of this subdivision;

(11) Drinking water standards means rules and regulations adopted and promulgated pursuant to section 71-5302 which (a) establish maximum levels

for harmful materials which, in the judgment of the director, may have an adverse effect on the health of persons and (b) apply only to public water systems;

(12) Lead free means (a) not containing more than two-tenths percent lead when used with respect to solder and flux and (b) not containing more than a weighted average of twenty-five hundredths percent lead when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings, and fixtures;

(13) Community water system means a public water system that (a) serves at least fifteen service connections used by year-round residents of the area served by the system or (b) regularly serves at least twenty-five year-round residents;

(14) Noncommunity water system means a public water system that is not a community water system;

(15) Nontransient noncommunity water system means a public water system that is not a community water system and that regularly serves at least twenty-five of the same individuals over six months per year; and

(16) Federal Safe Drinking Water Act means the federal Safe Drinking Water Act, 42 U.S.C. 300f et seq., as the act existed on January 1, 2021.

Source: Laws 1976, LB 821, § 1; Laws 1988, LB 383, § 1; Laws 1993, LB 121, § 441; Laws 1996, LB 1044, § 712; Laws 1997, LB 517, § 17; Laws 2001, LB 667, § 28; Laws 2003, LB 31, § 3; Laws 2004, LB 1005, § 98; Laws 2007, LB296, § 608; Laws 2007, LB463, § 1223; Laws 2012, LB723, § 1; Laws 2016, LB899, § 1; Laws 2021, LB148, § 72.

71-5301.01 Use of lead-free materials; rules and regulations.

The director may adopt and promulgate rules and regulations regarding the use of lead-free materials in public water systems in compliance with standards established in accordance with the federal Safe Drinking Water Act.

Source: Laws 1988, LB 383, § 2; Laws 2001, LB 667, § 29; Laws 2016, LB899, § 2; Laws 2021, LB148, § 73.

71-5302 Drinking water and monitoring standards; harmful materials; how determined; applicability; priority system.

(1) The director shall adopt and promulgate necessary minimum drinking water standards, in the form of rules and regulations, to insure that drinking water supplied to consumers through all public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological material determined by the director to be harmful to human health.

(2) The director may adopt and promulgate rules and regulations to require the monitoring of drinking water supplied to consumers through public water systems for chemical, radiological, physical, or bacteriological material determined by the director to be potentially harmful to human health.

(3) In determining what materials are harmful or potentially harmful to human health and in setting maximum levels for such harmful materials, the director shall be guided by:

(a) General knowledge of the medical profession and related scientific fields as to materials and substances which are harmful to humans if ingested through drinking water; and

(b) General knowledge of the medical profession and related scientific fields as to the maximum amounts of such harmful materials which may be ingested by human beings, over varying lengths of time, without resultant adverse effects on health.

(4) Subject to section 71-5310, state drinking water standards shall apply to each public water system in the state, except that such standards shall not apply to a public water system:

(a) Which consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(b) Which obtains all of its water from, but is not owned or operated by, a public water system to which such standards apply;

(c) Which does not sell water to any person; and

(d) Which is not a carrier which conveys passengers in interstate commerce.

(5) The director may adopt alternative monitoring requirements for public water systems in accordance with section 1418 of the federal Safe Drinking Water Act.

(6) The director may adopt a system for the ranking of safe drinking water projects with known needs or for which loan applications have been received by the director. In establishing the ranking system the director shall consider, among other things, the risk to human health, compliance with the federal Safe Drinking Water Act, and assistance to systems most in need based upon affordability criteria adopted by the director. This priority system shall be reviewed annually by the director.

Source: Laws 1976, LB 821, § 2; Laws 1988, LB 383, § 3; Laws 1997, LB 517, § 18; Laws 2001, LB 667, § 30; Laws 2007, LB296, § 609; Laws 2019, LB302, § 90; Laws 2021, LB148, § 74.

Cross References

Drinking water, standards for pesticide levels, see section 2-2626.

71-5304 Rules and regulations; construction and operation of system; objectives.

(1) The director shall adopt and promulgate, as necessary, minimum rules and regulations governing the siting, design, construction, alteration, classification, and operation of public water systems to insure that such public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological materials which are determined by the director, pursuant to section 71-5302, to be harmful to the physical health of human beings. In adopting such rules and regulations, the director shall attempt to meet the following objectives:

(a) Insure that facilities are physically separated, to the greatest extent possible, from water or land areas which contain high levels of materials which are harmful to humans;

(b) Insure that such facilities, and all parts thereof, are physically sealed so that leakage of harmful materials into the public water system itself from sources outside the system shall not occur;

(c) Insure that all materials which are used in the construction of a system shall not place harmful materials into the public water system;

(d) Insure that all chemicals or other substances used to treat and purify water are free from harmful materials; and

(e) Insure, to the greatest extent possible, that such rules and regulations will allow uninterrupted and efficient operation of public water systems.

(2) The rules and regulations may contain differences and distinctions based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the objectives of this section are met.

Source: Laws 1976, LB 821, § 4; Laws 2001, LB 667, § 32; Laws 2003, LB 31, § 5; Laws 2021, LB148, § 75.

71-5306 Director; powers and duties; Safe Drinking Water Act Cash Fund; created; use; investment.

(1) To carry out the provisions and purposes of the Nebraska Safe Drinking Water Act, the director may:

(a) Enter into agreements, contracts, or cooperative arrangements, under such terms as are deemed appropriate, with other state, federal, or interstate agencies or with municipalities, educational institutions, local health departments, or other organizations, entities, or individuals;

(b) Require all laboratory analyses to be performed at the Department of Health and Human Services, Division of Public Health, Environmental Laboratory, or at any other certified laboratory which has entered into an agreement for such services with the Department of Health and Human Services pursuant to section 71-2618;

(c) Receive financial and technical assistance from an agency of the federal government or from any other public or private agency;

(d) Enter the premises of a public water system at any time for the purpose of conducting monitoring, making inspections, or collecting water samples for analysis;

(e) Delegate those responsibilities and duties as deemed appropriate for the purpose of administering the requirements of the Nebraska Safe Drinking Water Act, including entering into agreements with designated agents which shall perform specifically delegated responsibilities and possess specifically delegated powers;

(f) Require the owner and operator of a public water system to establish and maintain records, make reports, and provide information as the department may reasonably require by regulation to enable it to determine whether such owner or operator has acted or is acting in compliance with the Nebraska Safe Drinking Water Act and rules and regulations adopted pursuant thereto. The department or its designated agent shall have access at all times to such records and reports; and

(g) Assess by regulation a fee for any review of plans and specifications pertaining to a public water system governed by section 71-5305 in order to defray no more than the actual cost of the services provided.

(2) All fees collected by the department pursuant to this section shall be remitted to the State Treasurer for credit to the Safe Drinking Water Act Cash Fund, which is hereby created. Such fund shall be used by the department for the purpose of administering the Nebraska Safe Drinking Water Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1976, LB 821, § 6; Laws 1986, LB 1047, § 7; Laws 1996, LB 1044, § 716; Laws 2000, LB 1115, § 78; Laws 2001, LB 667, § 37; Laws 2003, LB 242, § 130; Laws 2007, LB296, § 615; Laws 2008, LB928, § 30; Laws 2016, LB19, § 1; Laws 2021, LB148, § 76.

Cross References

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

71-5308 License; application; fees; renewal.

(1) An applicant shall submit an application and the applicable fees for a license to act as a licensed operator of a public water system to the department.

(2) The director shall adopt and promulgate rules and regulations to establish and collect fees to cover all reasonable and necessary costs of licensing activities, including a reasonable reserve. If an application for a license is denied or withdrawn, the department may retain a portion of the fee to cover the costs of the application process. The fees shall be waived for initial licenses for low-income individuals, military families, and young workers as those terms are defined in the Uniform Credentialing Act.

(3) The director shall remit fees collected under the Nebraska Safe Drinking Water Act to the State Treasurer for credit to the Safe Drinking Water Act Cash Fund.

(4) A license shall expire on December 31 of odd-numbered years. The director may renew a license upon application by the licensee, payment of the applicable fees, and a determination by the director that the licensee has complied with the act and the rules and regulations adopted and promulgated under the act.

Source: Laws 1976, LB 821, § 8; Laws 1997, LB 752, § 190; Laws 2001, LB 667, § 39; Laws 2002, LB 1021, § 90; Laws 2003, LB 242, § 131; Laws 2007, LB463, § 1227; Laws 2021, LB148, § 77.

Cross References

Uniform Credentialing Act, see section 38-101.

71-5309 Qualifications of operators of public water system; licenses; issuance; rules and regulations; expired license; relicensure; department; powers and duties; disciplinary action; grounds.

(1) The director shall adopt and promulgate, as necessary, minimum rules and regulations governing the qualifications of operators of public water systems. In adopting such rules and regulations, the director shall give consideration to the levels of training and experience which are required, in the opinion of the director, to insure to the greatest extent possible that the public water systems shall be operated in such a manner that (a) maximum efficiency

can be attained, (b) interruptions in service will not occur, (c) chemical treatment of the water will be adequate to maintain purity and safety, and (d) harmful materials will not enter the public water system.

(2) The director may require, by rule and regulation, that the applicant for a license successfully pass an examination on the subject of operation of a public water system. The rules and regulations, and any tests so administered, may set out different requirements for public water systems based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the criteria set forth in this section are followed.

(3) An applicant for a license as a public water system operator under the Nebraska Safe Drinking Water Act who previously held a license or certification as a public water system operator under the act and whose license or certification expired two years or more prior to the date of application shall take the examination required to be taken by an applicant for an initial license under the act. The department's review of the application for licensure by an applicant under this subsection shall include the results of such examination and the applicant's experience and training. The department may by rules and regulations establish requirements for relicensure under the act which are more stringent for applicants whose license is expired or has been revoked or suspended than those for applicants for initial licensure.

(4) The director may adopt and promulgate rules and regulations as necessary to establish procedures for licensing, including, but not limited to, issuance of temporary or emergency licenses, reinstatement of licenses, and reciprocal licensure agreements with other states.

(5) The director may deny, revoke, or suspend a license after notice and an opportunity for a hearing. Grounds for denial, revocation, or suspension include, but are not limited to, (a) fraud or deception by the applicant or licensee, (b) failure to use reasonable care in the performance of licensed activities, (c) inability of the applicant or licensee to perform licensed activities properly, (d) failure to maintain the minimum requirements for licensure or operation established by the act or the rules and regulations adopted and promulgated under the act, or (e) any other violation of the act or the rules and regulations adopted and promulgated under the act.

Source: Laws 1976, LB 821, § 9; Laws 1988, LB 383, § 7; Laws 2001, LB 667, § 40; Laws 2003, LB 31, § 6; Laws 2007, LB463, § 1228; Laws 2009, LB288, § 35; Laws 2021, LB148, § 78.

71-5310 Director; authorize variances or exemptions to standards; procedure.

(1) The director, with the approval of the council, may authorize variances or exemptions from the drinking water standards issued pursuant to section 71-5302 under conditions and in such manner as they deem necessary and desirable. Such variances or exemptions shall be permitted under conditions and in a manner which are not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under the federal Safe Drinking Water Act.

(2) Prior to granting a variance or an exemption, the director shall provide notice, in a newspaper of general circulation serving the area served by the public water system, of the proposed exemption or variance and that interested

persons may request a public hearing on the proposed exemption or variance. The director may require the system to provide other appropriate notice necessary to provide adequate notice to persons served by the system.

(3) If a public hearing is requested, the director shall set a time and place for the hearing and such hearing shall be held before the department prior to the variance or exemption being issued. Frivolous and insubstantial requests for a hearing may be denied by the director. An exemption or variance shall be conditioned on monitoring, testing, analyzing, or other requirements to insure the protection of the public health. A variance or an exemption granted shall include a schedule of compliance under which the public water system is required to meet each contaminant level or treatment technique requirement for which a variance or an exemption is granted within a reasonable time as specified by the director with the approval of the council.

Source: Laws 1976, LB 821, § 10; Laws 1988, LB 383, § 8; Laws 1996, LB 1044, § 717; Laws 2001, LB 667, § 41; Laws 2002, LB 1062, § 54; Laws 2007, LB296, § 616; Laws 2021, LB148, § 79.

71-5312.01 Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated.

(1) All rules and regulations adopted prior to July 1, 2021, under the Nebraska Safe Drinking Water Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2021, LB148.

(2) All licenses, certificates, or other forms of approval issued prior to July 1, 2021, in accordance with the Nebraska Safe Drinking Water Act shall remain valid as issued for purposes of the changes made by Laws 2021, LB148, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to July 1, 2021, under the Nebraska Safe Drinking Water Act shall be subject to the provisions of the act as they existed prior to July 1, 2021.

Source: Laws 2007, LB463, § 1230; Laws 2021, LB148, § 80.

(b) DRINKING WATER STATE REVOLVING FUND ACT

71-5316 Terms, defined.

For purposes of the Drinking Water State Revolving Fund Act, unless the context otherwise requires:

(1) Safe Drinking Water Act means the federal Safe Drinking Water Act, as the act existed on October 23, 2018;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of a safe drinking water project for a public water system; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of public water systems; or the inspection or supervision of any of such items;

(3) Council means the Environmental Quality Council;

(4) Department means the Department of Environment and Energy;

(5) Director means the Director of Environment and Energy;

(6) Operate and maintain means all necessary activities, including the normal replacement of equipment or appurtenances, to assure the dependable and economical function of a public water system in accordance with its intended purpose;

(7) Owner means any person owning or operating a public water system;

(8) Public water system has the definition found in section 71-5301; and

(9) Safe drinking water project means the structures, equipment, surroundings, and processes required to establish and operate a public water system.

Source: Laws 1997, LB 517, § 5; Laws 2001, LB 667, § 45; Laws 2019, LB302, § 91; Laws 2019, LB307, § 1.

71-5318 Drinking Water Facilities Loan Fund; Land Acquisition and Source Water Loan Fund; Drinking Water Administration Fund; created; use; investment.

(1) The Drinking Water Facilities Loan Fund is created. The fund shall be held as a trust fund for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, transfers made pursuant to section 71-5327, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may conduct activities related to financial administration of the fund, administration or provision of technical assistance through public water system source water assessment programs, and implementation of a source water petition program under the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

The fund and the assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to (a) pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon, and (b) buy or refinance the debt obligation of any municipality for a public water supply system if the debt was incurred and construction began after July 1, 1993.

The director may transfer any money in the Drinking Water Facilities Loan Fund to the Wastewater Treatment Facilities Construction Loan Fund to meet the purposes of section 71-5327. The director shall identify any such transfer in the intended use plan presented to the council for annual review and adoption pursuant to section 71-5321.

(2) The Land Acquisition and Source Water Loan Fund is created. The fund shall be held as a trust for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may, in consultation with the Director of Public Health of the Division of Public Health, conduct activities other than the making of loans permitted under section 1452(k) of the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for security, investment, and repayment of bonds.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or secure the payment of bonds and the interest thereon, except that amounts credited to the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

The director may transfer any money in the Land Acquisition and Source Water Loan Fund to the Drinking Water Facilities Loan Fund.

(3) There is hereby created the Drinking Water Administration Fund. Any funds available for administering loans or fees collected pursuant to the Drinking Water State Revolving Fund Act shall be remitted to the State Treasurer for credit to such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to fund subdivisions (9), (11), and (12) of section 71-5322. The annual obligation of the state pursuant to subdivisions (9) and (12) of section 71-5322 shall not exceed sixty-five percent of the revenue from administrative fees collected pursuant to section 71-5321 in the prior fiscal year.

The director may transfer any money in the Drinking Water Administration Fund to the Drinking Water Facilities Loan Fund to meet the state matching appropriation requirements of any applicable federal capitalization grants or to meet the purposes of subdivision (9) of section 71-5322.

Source: Laws 1997, LB 517, § 7; Laws 2001, LB 667, § 46; Laws 2007, LB80, § 1; Laws 2007, LB296, § 620; Laws 2019, LB307, § 2; Laws 2022, LB809, § 2.
Effective date July 21, 2022.

Cross References

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

71-5322 Department; powers and duties.

The department shall have the following powers and duties:

(1) The power to establish a program to make loans to owners of public water systems, individually or jointly, for construction or modification of safe drinking water projects in accordance with the Drinking Water State Revolving Fund Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power, if so authorized by the council pursuant to section 71-5321, to execute and deliver documents obligating the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof to the extent permitted by section 71-5318 to repay, with interest, loans to or credits into such funds and to execute and deliver documents pledging to the extent permitted by section 71-5318 all or part of such funds and assets to secure, directly or indirectly, the loans or credits;

(3) The duty to prepare an annual report for the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically;

(4) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

(a) Accounting from the Nebraska Investment Finance Authority for the costs associated with the issuance of bonds pursuant to the act;

(b) Accounting for payments or deposits received by the funds;

(c) Accounting for disbursements made by the funds; and

(d) Balancing the funds at the beginning and end of the accounting period;

(5) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

(6) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by the council;

(7) The power to develop an intended use plan, in consultation with the Director of Public Health of the Division of Public Health, for adoption by the council;

(8) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Safe Drinking Water Act;

(9) The power to enter into agreements to provide grants and loan forgiveness concurrent with loans to public water systems that provide service to ten thousand persons or less, that are operated by political subdivisions, and that demonstrate serious financial hardships. The department may enter into agreements for up to seventy-five percent of the eligible project cost. Such agreements shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds;

(10) The power to enter into agreements to provide grants and loan forgiveness, for up to seventy-five percent of eligible project costs, concurrent with

loans to public water systems for lead service line replacement projects in accordance with all federal regulatory and statutory provisions;

(11) The power to provide emergency funding to public water systems operated by political subdivisions with drinking water facilities which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such funding shall not be used for routine repair or maintenance of facilities;

(12) The power to provide financial assistance consistent with the intended use plan, described in subdivision (7) of this section, for completion of engineering studies, research projects to investigate low-cost options for achieving compliance with safe drinking water standards, preliminary engineering reports, regional water system planning, source water protection, and other studies for the purpose of enhancing the ability of communities to meet the requirements of the Safe Drinking Water Act, to public water systems that provide service to ten thousand persons or less, that are operated by political subdivisions, and that demonstrate serious financial hardships. The department may enter into agreements for up to ninety percent of the eligible project cost. Such agreements shall contain a provision that payment of the amount obligated is conditional upon the availability of appropriated funds; and

(13) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Drinking Water State Revolving Fund Act.

Source: Laws 1997, LB 517, § 11; Laws 2001, LB 667, § 47; Laws 2007, LB80, § 2; Laws 2007, LB296, § 621; Laws 2012, LB782, § 122; Laws 2017, LB182, § 1; Laws 2022, LB809, § 3.
Effective date July 21, 2022.

71-5325 Loan terms.

Loan terms shall include, but not be limited to, the following:

(1) The term of the loan shall not exceed thirty years, except for systems serving disadvantaged communities which term may not exceed forty years;

(2) The interest rate shall be at or below market interest rates;

(3) The annual principal and interest payment shall commence not later than one year after completion of any project; and

(4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

Source: Laws 1997, LB 517, § 14; Laws 2019, LB307, § 3.

71-5327 Reserves authorized.

At any time after the first year the fund is effective the director may: (1) Reserve a dollar amount equal to thirty-three percent of a capitalization grant made pursuant to section 1452 of the Safe Drinking Water Act and add the funds reserved to any funds provided to the state pursuant to section 601 of the Federal Water Pollution Control Act; and (2) reserve in any year a dollar amount up to the dollar amount that may be reserved under subdivision (1) of this section of the capitalization grants made pursuant to section 601 of the Federal Water Pollution Control Act and add the reserved funds to any funds

provided to the state pursuant to section 1452 of the federal Safe Drinking Water Act.

Source: Laws 1997, LB 517, § 16; Laws 2019, LB307, § 4.

ARTICLE 56
RURAL HEALTH

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

Section
71-5657. Commission members; expenses.
71-5668. Loan repayment recipient agreement; contents; funding; limitation.

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

71-5657 Commission members; expenses.

Members of the commission shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177 from funds appropriated for the Rural Health Systems and Professional Incentive Act.

Source: Laws 1991, LB 400, § 8; Laws 2020, LB381, § 68.

71-5668 Loan repayment recipient agreement; contents; funding; limitation.

Each loan repayment recipient shall execute an agreement with the department and a local entity. Such agreement shall be exempt from the requirements of sections 73-501 to 73-510 and shall include, at a minimum, the following terms:

(1) The loan repayment recipient agrees to practice his or her profession, and a physician, dentist, nurse practitioner, or physician assistant also agrees to practice an approved specialty, in a designated health profession shortage area for at least three years and to accept medicaid patients in his or her practice;

(2) In consideration of the agreement by the recipient, the State of Nebraska and a local entity within the designated health profession shortage area will provide equal funding for the repayment of the recipient's qualified educational debts except as provided in subdivision (5) of this section, in amounts up to thirty thousand dollars per year per recipient for physicians, dentists, and psychologists and up to fifteen thousand dollars per year per recipient for physician assistants, nurse practitioners, pharmacists, physical therapists, occupational therapists, and mental health practitioners toward qualified educational debts for up to three years. The department shall make payments directly to the recipient;

(3) If the loan repayment recipient discontinues practice in the shortage area prior to completion of the three-year requirement, the recipient shall repay to the state one hundred fifty percent of the total amount of funds provided to the recipient for loan repayment with interest at a rate of eight percent simple interest per year from the date of default. Upon repayment by the recipient to the department, the department shall reimburse the local entity its share of the funds which shall not be more than the local entity's share paid to the loan repayment recipient;

(4) Any practice or payment obligation incurred by the loan repayment recipient under the loan repayment program is canceled in the event of the loan repayment recipient's total and permanent disability or death; and

(5) Beginning on July 1, 2022, any agreements entered into by December 31, 2024, shall first use federal funds from the federal American Rescue Plan Act of 2021 for the purposes of repaying qualified educational debts prior to using any state or local funds. Agreements using federal funds from the federal American Rescue Plan Act of 2021 shall not require equal funding from a local entity. Any federal funds from the act committed to agreements during this time period shall be used by December 31, 2026.

Source: Laws 1991, LB 400, § 19; Laws 1993, LB 536, § 101; Laws 1994, LB 1223, § 64; Laws 1996, LB 1155, § 56; Laws 1997, LB 577, § 5; Laws 2000, LB 1115, § 84; Laws 2001, LB 214, § 5; Laws 2004, LB 1005, § 108; Laws 2006, LB 962, § 3; Laws 2008, LB797, § 22; Laws 2009, LB196, § 3; Laws 2012, LB858, § 3; Laws 2015, LB196, § 9; Laws 2022, LB1007, § 1.
Effective date July 21, 2022.

ARTICLE 57
SMOKING AND TOBACCO

(d) NEBRASKA CLEAN INDOOR AIR ACT

(d) NEBRASKA CLEAN INDOOR AIR ACT

71-5716 Act, how cited.

Sections 71-5716 to 71-5735 shall be known and may be cited as the Nebraska Clean Indoor Air Act.

Source: Laws 2008, LB395, § 1; Laws 2015, LB118, § 8; Laws 2020, LB840, § 1.

71-5717 Purpose of act.

The purpose of the Nebraska Clean Indoor Air Act is to protect the public health and welfare by prohibiting smoking in public places and places of employment with limited exceptions for guestrooms and suites, research, tobacco retail outlets, electronic smoking device retail outlets, and cigar shops. The limited exceptions permit smoking in public places where the public would reasonably expect to find persons smoking, including guestrooms and suites which are subject to expectations of privacy like private residences, institutions engaged in research related to smoking, and tobacco retail outlets, electronic smoking device retail outlets, and cigar shops which provide the public legal retail outlets to sample, use, and purchase tobacco products and products related to smoking. The act shall not be construed to prohibit or otherwise restrict smoking in outdoor areas. The act shall not be construed to permit smoking where it is prohibited or otherwise restricted by other applicable law,

ordinance, or resolution. The act shall be liberally construed to further its purpose.

Source: Laws 2008, LB395, § 2; Laws 2015, LB118, § 9; Laws 2020, LB840, § 2.

71-5718 Definitions, where found.

For purposes of the Nebraska Clean Indoor Air Act, the definitions found in sections 71-5718.01 to 71-5728 apply.

Source: Laws 2008, LB395, § 3; Laws 2020, LB840, § 3.

71-5718.01 Electronic smoking device, defined.

Electronic smoking device means an electronic nicotine delivery system as defined in section 28-1418.01. The term includes any such device regardless of whether it is manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor. The term also includes any substance that is used in an electronic smoking device. The term does not include a diffuser, humidifier, prescription inhaler, or similar device.

Source: Laws 2020, LB840, § 4.

71-5718.02 Electronic smoking device retail outlet, defined; persons allowed to enter; employees; age restrictions.

(1) Electronic smoking device retail outlet means a store that:

(a) Is licensed as provided under sections 28-1421 and 28-1422;

(b) Sells electronic smoking devices and products directly related to electronic smoking devices;

(c) Does not sell alcohol or gasoline;

(d) Derives no more than twenty percent of its revenue from the sale of food and food ingredients as defined in section 77-2704.24; and

(e) Prohibits persons under twenty-one years of age from entering the store in accordance with subsection (2) of this section.

(2)(a) Prior to January 1, 2022, an electronic smoking device retail outlet shall not allow a person under twenty-one years of age to enter the store but may allow an employee who is under twenty-one years of age to work in the store.

(b) On and after January 1, 2022, an electronic smoking device retail outlet shall not allow a person under twenty-one years of age to enter the store and shall not allow an employee who is under twenty-one years of age to work in the store.

Source: Laws 2020, LB840, § 5.

71-5727 Smoke or smoking, defined.

Smoke or smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any

manner or in any form. The term includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

Source: Laws 2008, LB395, § 12; Laws 2020, LB840, § 6.

71-5730 Exemptions; legislative findings; legislative intent.

(1) The following indoor areas are exempt from section 71-5729:

(a) Guestrooms and suites that are rented to guests and that are designated as smoking rooms, except that not more than twenty percent of rooms rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;

(b) Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education;

(c) Tobacco retail outlets; and

(d) Cigar shops as defined in section 53-103.08.

(2) Electronic smoking device retail outlets are exempt from section 71-5729 as it relates to the use of electronic smoking devices only.

(3)(a) The Legislature finds that allowing smoking in tobacco retail outlets as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke since the general public does not frequent tobacco retail outlets and should reasonably expect that there would be second-hand smoke in tobacco retail outlets and could choose to avoid such exposure. The products that tobacco retail outlets sell are legal for customers who meet the age requirement. Customers should be able to try them within the tobacco retail outlet, especially given the way that tobacco customization may occur in how tobacco is blended and cigars are produced. The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(b) It is the intent of the Legislature to allow cigar and pipe smoking in tobacco retail outlets that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

(4)(a) The Legislature finds that allowing smoking in cigar shops as a limited exception to the Nebraska Clean Indoor Air Act does not interfere with the original intent that the general public and employees not be unwillingly subjected to second-hand smoke. This exception poses a de minimis restriction on the public and employees given the limited number of cigar shops compared to other businesses that sell alcohol, cigars, and pipe tobacco, and any member of the public should reasonably expect that there would be second-hand smoke in a cigar shop given the nature of the business and could choose to avoid such exposure.

(b) The Legislature finds that (i) cigars and pipe tobacco have different characteristics than other forms of tobacco such as cigarettes, (ii) cigars are customarily paired with various spirits such as cognac, single malt whiskey, bourbon, rum, rye, port, and others, and (iii) unlike cigarette smokers, cigar and pipe smokers may take an hour or longer to enjoy a cigar or pipe while cigarettes simply serve as a mechanism for delivering nicotine. Cigars paired with selected liquor creates a synergy unique to the particular pairing similar to wine paired with particular foods. Cigars are a pure, natural product wrapped in a tobacco leaf that is typically not inhaled in order to enjoy the taste of the smoke, unlike cigarettes that tend to be processed with additives and wrapped in paper and are inhaled. Cigars have a different taste and smell than cigarettes due to the fermentation process cigars go through during production. Cigars tend to cost considerably more than cigarettes, and their quality and characteristics vary depending on the type of tobacco plant, the geography and climate where the tobacco was grown, and the overall quality of the manufacturing process. Not only does the customized blending of the tobacco influence the smoking experience, so does the freshness of the cigars, which is dependent on how the cigars were stored and displayed. These variables are similar to fine wines, which can also be very expensive to purchase. It is all of these variables that warrant a customer wanting to sample the product before making such a substantial purchase.

(c) The Legislature finds that exposure to second-hand smoke is inherent in the selling and sampling of cigars and pipe tobacco and that this exposure is inextricably connected to the nature of selling this legal product, similar to other inherent hazards in other professions and employment.

(d) It is the intent of the Legislature to allow cigar and pipe smoking in cigar shops that meet specific statutory criteria not inconsistent with the fundamental nature of the business. This exception to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance with the intent of the act to protect public places and places of employment.

Source: Laws 2008, LB395, § 15; Laws 2009, LB355, § 6; Laws 2010, LB861, § 82; Laws 2015, LB118, § 10; Laws 2020, LB840, § 7.

71-5735 Tobacco retail outlet; sign required; waiver signed by employee; form; owner; duties.

(1) The owner of a tobacco retail outlet shall post a sign on all entrances to the tobacco retail outlet, on the outside of each door, in a conspicuous location slightly above or next to the door, with the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES AND ELECTRONIC SMOKING DEVICES IS NOT ALLOWED.

(2) Beginning November 1, 2015, the owner shall provide to the Division of Public Health a copy of a waiver signed prior to employment by each employee on a form prescribed by the division. The waiver shall expressly notify the employee that he or she will be exposed to second-hand smoke, and the employee shall acknowledge that he or she understands the risks of exposure to second-hand smoke.

(3) The owner shall not allow cigarette smoking or the use of an electronic smoking device in the tobacco retail outlet.

Source: Laws 2015, LB118, § 11; Laws 2020, LB840, § 8.

ARTICLE 59
ASSISTED-LIVING FACILITY ACT

Section
71-5901. Act, how cited.
71-5907. State Fire Code classification.
71-5909. Grievance procedure.

71-5901 Act, how cited.

Sections 71-5901 to 71-5909 shall be known and may be cited as the Assisted-Living Facility Act.

Source: Laws 2004, LB 1005, § 45; Laws 2019, LB571, § 1.

71-5907 State Fire Code classification.

For purposes of the State Fire Code under section 81-503.01, an assisted-living facility shall be classified as (1) residential board and care if the facility meets the residential board and care classification requirements of the State Fire Code or (2) limited care if the facility meets the limited care classification requirements of the State Fire Code.

Source: Laws 2004, LB 1005, § 51; Laws 2019, LB195, § 1.

71-5909 Grievance procedure.

(1) For purposes of this section:

(a) Grievance means a written expression of dissatisfaction that may or may not be the result of an unresolved complaint; and

(b) Grievance procedure means the written policy of an assisted-living facility for addressing a grievance from an individual including an employee or resident.

(2) Each assisted-living facility shall, on or before January 1, 2020, provide to the department the grievance procedure provided to an applicant for admission to the assisted-living facility. When such grievance procedure is modified, updated, or otherwise changed, the new grievance procedure shall be provided to the department within seven business days after such new grievance procedure takes effect. The department shall make such grievance procedure available to the deputy public counsel for institutions.

Source: Laws 2019, LB571, § 2.

ARTICLE 62
NEBRASKA REGULATION OF HEALTH PROFESSIONS ACT

Section
71-6227. Rules and regulations; professional and clerical services; expenses.

71-6227 Rules and regulations; professional and clerical services; expenses.

(1) The director may, with the advice of the board, adopt and promulgate rules and regulations necessary to carry out the Nebraska Regulation of Health Professions Act.

(2) The director shall provide all necessary professional and clerical services to assist the committees and the board. Records of all official actions and

minutes of all business coming before the committees and the board shall be kept. The director shall be the custodian of all records, documents, and other property of the committees and the board.

(3) Committee members shall receive no salary but shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1985, LB 407, § 27; Laws 2020, LB381, § 69.

ARTICLE 63

ENVIRONMENTAL HAZARDS

(a) ASBESTOS CONTROL

(b) RESIDENTIAL LEAD-BASED PAINT PROFESSIONS PRACTICE ACT

(a) ASBESTOS CONTROL

71-6303 Administration of act; rules and regulations; fees; department; powers and duties.

(1) The department shall administer the Asbestos Control Act.

(2) The department shall adopt and promulgate rules and regulations necessary to carry out the act. The department shall adopt state standards governing asbestos projects and may adopt or incorporate part or all of any federal standards in the state standards so long as state standards are no less stringent than federal standards.

(3)(a) The department shall prescribe fees based upon the following schedule:

(i) For a business entity license or license renewal, not less than two thousand dollars or more than five thousand dollars;

(ii) For waiver on an emergency basis of a business entity license, not less than two thousand dollars or more than five thousand dollars;

(iii) For waiver of a license for a business entity not primarily engaged in asbestos projects, not less than two thousand dollars or more than five thousand dollars;

(iv) For approval of an initial training course, not less than one thousand dollars or more than two thousand five hundred dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(v) For approval of a review course or a four-hour course on Nebraska law, rules, and regulations, not less than five hundred dollars or more than one thousand dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(vi) For an onsite inspection of an asbestos project other than an initial inspection, not less than one hundred fifty dollars or more than two hundred fifty dollars. Such fees shall not be assessed for more than three onsite inspections per year during the period an actual asbestos project is in progress; and

(vii) For a project review of each asbestos project of a licensed business entity which is equal to or greater than two hundred sixty linear feet or any

combination which is equal to or greater than one hundred sixty square feet and linear feet, including any initial onsite inspection, not less than two hundred dollars or more than five hundred dollars.

(b) Any business applicant whose application is rejected shall be allowed the return of the application fee, except that an administrative charge of three hundred dollars for a license and one hundred dollars for approval of a training course shall be retained by the department.

(c) All fees shall be based on the costs of administering the Asbestos Control Act. In addition to the fees prescribed in this section, the department may charge and receive reimbursement for board, room, and travel by employees in excess of three hundred dollars, which reimbursement shall not exceed the amounts allowable in sections 81-1174 to 81-1177. All such fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the act.

(4) At least once a year during the continuation of an asbestos project, the department shall conduct an onsite inspection of each licensed business entity's procedures for performing asbestos projects.

(5) The department may enter into agreements or contracts with public agencies to conduct any inspections required under the act.

(6) The department shall adopt and promulgate rules and regulations defining work practices for asbestos projects. The department may provide for alternatives to specific work practices when the health, safety, and welfare of all classes of asbestos occupations and the general public are adequately protected.

(7) The department may apply for and receive funds from the federal government and any other public or private entity for the purposes of administering the act.

Source: Laws 1986, LB 1051, § 3; Laws 1988, LB 1073, § 3; Laws 1991, LB 703, § 52; Laws 1995, LB 406, § 74; Laws 1996, LB 1044, § 762; Laws 2002, LB 1021, § 99; Laws 2003, LB 242, § 144; Laws 2007, LB296, § 655; Laws 2007, LB463, § 1244; Laws 2020, LB381, § 70.

(b) RESIDENTIAL LEAD-BASED PAINT PROFESSIONS PRACTICE ACT

71-6321 Administration of act; rules and regulations; department; powers and duties.

(1) The department shall administer the Residential Lead-Based Paint Professions Practice Act.

(2) The department shall adopt and promulgate rules and regulations necessary to carry out such act. The department shall adopt state standards governing abatement projects and may adopt or incorporate part or all of any federal standards in such state standards so long as state standards are no less stringent than federal standards.

(3) The department shall prescribe fees based upon the following schedule:

(a) For an annual firm license or license renewal, not less than two hundred dollars or more than five hundred dollars;

(b) For accreditation of a training program, not less than one thousand dollars or more than two thousand five hundred dollars, which fee shall include one onsite inspection if such inspection is required by the department;

(c) For accreditation of a review course or a course on Nebraska law, rules, and regulations, not less than five hundred dollars or more than one thousand dollars, which fee shall include one onsite inspection if such inspection is required by the department;

(d) For onsite inspections other than initial inspections, not less than one hundred fifty dollars or more than two hundred fifty dollars. Such fees shall not be assessed for more than three onsite inspections per year during the period an actual abatement project is in progress; and

(e) For a project review of each abatement project of a licensed firm, not less than two hundred dollars or more than five hundred dollars.

Any business applicant whose application is rejected shall be allowed the return of the application fee, except that an administrative charge of one hundred dollars for a firm license and for accreditation of a training program shall be retained by the department.

All fees shall be based on the costs of administering the act. In addition to the fees prescribed in this section, the department may charge and receive reimbursement for board, room, and travel by employees in excess of three hundred dollars, which reimbursement shall not exceed the amounts allowable in sections 81-1174 to 81-1177. All such fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the act.

(4) At least once a year during the continuation of an abatement project the department shall conduct an onsite inspection of each licensed firm's procedures for performing abatement projects.

(5) The department may enter into agreements or contracts with public agencies to conduct any inspections required under the act if such agencies have the appropriate licensure or accreditation as described in the act.

(6) The department shall adopt and promulgate rules and regulations defining work practices for abatement projects, for the licensure of lead-based paint professions, for the accreditation of training programs, for the accreditation of training program providers, for the dissemination of prerenovation information to homeowners and occupants, for the facilitation of compliance with federal lead-based paint hazard control grant programs, and for the implementation of lead-based paint compliance monitoring and enforcement activities. The department may provide for alternatives to specific work practices when the health, safety, and welfare of all classes of lead-based paint professions and the general public are adequately protected.

(7) The department may apply for and receive funds from the federal government and any other public or private entity for the purposes of administering the act. Any funds applied for, received, or used by the department or any political subdivision from the federal government or any public entity may be used only to abate lead-based paint hazards and for the administration of

lead-based paint programs which address health and environmental hazards caused by lead-based paint.

Source: Laws 1994, LB 1210, § 169; Laws 1996, LB 1044, § 764; Laws 1999, LB 863, § 44; Laws 2001, LB 668, § 3; Laws 2002, LB 1021, § 101; Laws 2003, LB 242, § 145; Laws 2007, LB296, § 661; Laws 2007, LB463, § 1274; Laws 2020, LB381, § 71.

ARTICLE 64

BUILDING CONSTRUCTION

Section
71-6403. State building code; adopted; amendments.
71-6404. State building code; applicability.
71-6405. State building code; compliance required.
71-6406. County, city, or village; building code; adopt; amend; enforce; copy; fees.

71-6403 State building code; adopted; amendments.

(1) There is hereby created the state building code. The Legislature hereby adopts by reference:

(a) The International Building Code (IBC), 2018 edition, except section 101.4.3 and chapter 29, published by the International Code Council, except that (i) section 305.2.3 applies to a facility having twelve or fewer children and (ii) section 310.4.1 applies to a care facility for twelve or fewer persons;

(b) The International Residential Code (IRC), 2018 edition, except section R313 and chapters 25 through 33, published by the International Code Council;

(c) The International Existing Building Code, 2018 edition, except section 809, published by the International Code Council; and

(d) The Uniform Plumbing Code, 2018 edition, designated by the American National Standards Institute as an American National Standard.

(2) The codes adopted by reference in subsection (1) of this section and the minimum standards for radon resistant new construction adopted under section 76-3504 shall constitute the state building code except as amended pursuant to the Building Construction Act or as otherwise authorized by state law.

Source: Laws 1987, LB 227, § 3; Laws 1993, LB 319, § 1; Laws 1996, LB 1304, § 4; Laws 2003, LB 643, § 1; Laws 2010, LB799, § 1; Laws 2011, LB546, § 1; Laws 2015, LB540, § 1; Laws 2017, LB590, § 1; Laws 2019, LB130, § 1; Laws 2019, LB348, § 1; Laws 2019, LB405, § 1; Laws 2021, LB131, § 21.

71-6404 State building code; applicability.

(1) For purposes of the Building Construction Act:

(a) Component means a portion of the state building code created pursuant to section 71-6403; and

(b) Radon resistant new construction has the same meaning as in section 76-3503.

(2) The state building code shall be the building and construction standard within the state and shall be applicable:

(a) To all buildings and structures owned by the state or any state agency;

(b) In each county, city, or village which elects to adopt the state building code as its local building or construction code pursuant to section 71-6406; and

(c) In each county, city, or village which has not adopted a local building or construction code pursuant to section 71-6406 within two years after an update to the state building code.

Source: Laws 1987, LB 227, § 4; Laws 1993, LB 319, § 2; Laws 2010, LB799, § 2; Laws 2016, LB704, § 213; Laws 2019, LB96, § 1; Laws 2019, LB130, § 2.

71-6405 State building code; compliance required.

(1) All state agencies, including all state constitutional offices, state administrative departments, and state boards and commissions, the University of Nebraska, and the Nebraska state colleges, shall comply with the state building code. The state building code shall be the legally applicable code in all buildings and structures owned by the state or any state agency regardless of whether the state, state agency, or applicable county, city, or village has provided for the administration or enforcement of the state building code.

(2) No state agency may adopt, promulgate, or enforce any rule or regulation in conflict with the state building code unless otherwise specifically authorized by statute to (a) adopt, promulgate, or enforce any rule or regulation in conflict with the state building code or (b) adopt or enforce a building or construction code other than the state building code.

(3) Nothing in the Building Construction Act shall authorize any state agency to apply such act to manufactured homes or recreational vehicles regulated by the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or to modular housing units regulated by the Nebraska Uniform Standards for Modular Housing Units Act.

Source: Laws 1987, LB 227, § 5; Laws 1993, LB 319, § 3; Laws 1996, LB 1304, § 5; Laws 2003, LB 643, § 2; Laws 2010, LB799, § 3; Laws 2011, LB546, § 2; Laws 2012, LB1001, § 1; Laws 2017, LB590, § 2; Laws 2021, LB131, § 22.

Cross References

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

71-6406 County, city, or village; building code; adopt; amend; enforce; copy; fees.

(1)(a) Any county, city, or village may enact, administer, or enforce a local building or construction code if or as long as such county, city, or village:

(i) Adopts the state building code; or

(ii) Adopts a building or construction code that conforms generally with the state building code.

(b) If a county, city, or village does not adopt a code as authorized under subdivision (a) of this subsection within two years after an update to the state building code, the state building code shall apply in the county, city, or village, except that such code shall not apply to construction on a farm or for farm purposes.

(2) A local building or construction code shall be deemed to conform generally with the state building code if it:

(a) Adopts a special or differing building standard by amending, modifying, or deleting any portion of the state building code in order to reduce unnecessary costs of construction, increase safety, durability, or efficiency, establish best building or construction practices within the county, city, or village, or address special local conditions within the county, city, or village;

(b) Adopts any supplement, new edition, appendix, or component or combination of components of the state building code;

(c) Adopts any of the following:

(i) Section 305 or 310 of the 2018 edition of the International Building Code without the exceptions described in subdivision (1)(a) of section 71-6403;

(ii) Section 101.4.3 or any portion of chapter 29 of the 2018 edition of the International Building Code;

(iii) Section R313 or any portion of chapters 25 through 33 of the 2018 edition of the International Residential Code; or

(iv) Section 809 of the 2018 edition of the International Existing Building Code;

(d) Adopts a plumbing code, an electrical code, a fire prevention code, or any other standard code as authorized under section 14-419, 15-905, 18-132, or 23-172;

(e) Adopts a local energy code as authorized under section 81-1618; or

(f) Adopts minimum standards for radon resistant new construction which meet the minimum standards adopted under section 76-3504.

(3) A local building or construction code shall not be deemed to conform generally with the state building code if it:

(a) Includes a prior edition of any component or combination of components of the state building code; or

(b) Does not include minimum standards for radon resistant new construction that meet the minimum standards adopted under section 76-3504.

(4) A county, city, or village shall notify the Department of Environment and Energy if it amends or modifies its local building or construction code in such a way as to delete any portion of (a) chapter 13 of the 2018 edition of the International Building Code or (b) chapter 11 of the 2018 edition of the International Residential Code. The notification shall be made within thirty days after the adoption of such amendment or modification.

(5) A county, city, or village shall not adopt or enforce a local building or construction code other than as provided by this section.

(6) A county, city, or village which adopts or enforces a local building or construction code under this section shall regularly update its code. For purposes of this section, a code shall be deemed to be regularly updated if the most recently enacted state building code or a code that conforms generally with the state building code is adopted by the county, city, or village within two years after an update to the state building code.

(7) A county, city, or village may adopt amendments for the proper administration and enforcement of its local building or construction code including organization of enforcement, qualifications of staff members, examination of plans, inspections, appeals, permits, and fees. Any amendment adopted pursuant to this section shall be published separately from the local building or construction code. Any local building or construction code adopted under

subdivision (1)(a) of this section or the state building code if applicable under subdivision (1)(b) of this section shall be the legally applicable code regardless of whether the county, city, or village has provided for the administration or enforcement of its local building or construction code under this subsection.

(8) A county, city, or village which adopts one or more standard codes as part of its local building or construction code under this section shall keep at least one copy of each adopted code, or portion thereof, for use and examination by the public in the office of the clerk of the county, city, or village prior to the adoption of the code and as long as such code is in effect.

(9) Notwithstanding the provisions of the Building Construction Act, a public building of any political subdivision shall be built in accordance with the applicable local building or construction code. Fees, if any, for services which monitor a builder's application of codes shall be negotiable between the political subdivisions involved, but such fees shall not exceed the actual expenses incurred by the county, city, or village doing the monitoring.

Source: Laws 1987, LB 227, § 6; Laws 1993, LB 319, § 4; Laws 2010, LB799, § 4; Laws 2011, LB546, § 3; Laws 2015, LB540, § 2; Laws 2016, LB704, § 214; Laws 2017, LB590, § 3; Laws 2019, LB96, § 2; Laws 2019, LB130, § 3; Laws 2019, LB348, § 2; Laws 2019, LB405, § 2; Laws 2021, LB131, § 23.

ARTICLE 65
IN-HOME PERSONAL SERVICES

Section
71-6501. Terms, defined.

71-6501 Terms, defined.

For purposes of sections 71-6501 to 71-6504:

(1) Activities of daily living has the definition found in section 71-6602;

(2) Attendant services means services provided to nonmedically fragile persons, including hands-on assistance with activities of daily living, transfer, grooming, bathing, medication reminders, and similar activities;

(3) Companion services means the provision of companionship and assistance with letter writing, reading, and similar activities;

(4) Homemaker services means assistance with household tasks, including, but not limited to, housekeeping, personal laundry, shopping, incidental transportation, and meals;

(5) In-home personal services means attendant services, companion services, and homemaker services that do not require the exercise of medical or nursing judgment provided to a person in his or her residence to enable the person to remain safe and comfortable in such residence;

(6) In-home personal services agency means an entity that provides or offers to provide in-home personal services for compensation by employees of the agency or by persons with whom the agency has contracted to provide such services. In-home personal services agency does not include a local public health department as defined in section 71-1626, a health care facility as defined in section 71-413, a health care service as defined in section 71-415, programs supported by the federal Corporation for National and Community Service, an unlicensed home care registry or similar entity that screens and

schedules independent contractors as caregivers for persons, or an agency that provides only housecleaning services. A home health agency may be an in-home personal services agency; and

(7) In-home personal services worker means a person who meets the requirements of section 71-6502 and provides in-home personal services.

Source: Laws 2007, LB236, § 39; Laws 2022, LB824, § 1.
Effective date July 21, 2022.

ARTICLE 66

HOME HEALTH AIDE SERVICES

71-6602 Terms, defined.

As used in sections 71-6601 to 71-6615, unless the context otherwise requires:

(1) Activities of daily living means assistance with ambulation, bathing, toileting, feeding, and similar activities;

(2) Basic therapeutic care means basic health care procedures, including, but not limited to, measuring vital signs, applying hot and cold applications and nonsterile dressings, and assisting with, but not administering, internal and external medications which are normally self-administered. Basic therapeutic care does not include health care procedures which require the exercise of nursing or medical judgment;

(3) Department means the Department of Health and Human Services;

(4) Home health agency means a home health agency as defined in section 71-417;

(5) Home health aide means a person who is employed by a home health agency to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the home health agency;

(6) Personal care means hair care, nail care, shaving, dressing, oral care, and similar activities;

(7) Supervised practical training means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse; and

(8) Vital signs means temperature, pulse, respiration, and blood pressure.

Source: Laws 1988, LB 1100, § 117; Laws 1991, LB 703, § 54; Laws 1996, LB 1044, § 765; Laws 1998, LB 1354, § 41; Laws 2000, LB 819, § 136; Laws 2007, LB296, § 662; Laws 2022, LB824, § 2.
Effective date July 21, 2022.

ARTICLE 67

MEDICATION REGULATION

(b) MEDICATION AIDE ACT

(b) MEDICATION AIDE ACT

71-6720 Purpose of act; applicability.

(1) The purposes of the Medication Aide Act are to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of medication aides to assist in the administration of medications by (a) competent individuals, (b) caretakers who are parents, foster parents, family, friends or legal guardians, and (c) licensed health care professionals.

(2) The act applies to all settings in which medications are administered except the home, unless the in-home administration of medication is provided through a licensed home health agency, a licensed or certified home and community-based provider, or a licensed PACE center as defined in section 71-424.01.

(3) The act does not apply to the provision of reminders to persons to self-administer medication or assistance to persons in the delivery of nontherapeutic topical applications by in-home personal services workers. For purposes of this subsection, in-home personal services worker has the definition found in section 71-6501.

Source: Laws 1998, LB 1354, § 10; Laws 2007, LB236, § 44; Laws 2020, LB1053, § 20.

ARTICLE 70

BREAST AND CERVICAL CANCER AND MAMMOGRAPHY

Section
71-7012. Breast and Cervical Cancer Advisory Committee; established; members; appointment; terms; duties; expenses.

71-7012 Breast and Cervical Cancer Advisory Committee; established; members; appointment; terms; duties; expenses.

The Breast and Cervical Cancer Advisory Committee is established. The committee consists of the members of the Mammography Screening Committee serving immediately prior to September 9, 1995, and eight additional members appointed by the chief executive officer of the department or his or her designee who have expertise or a personal interest in cervical cancer. The committee shall consist of not more than twenty-four volunteer members, at least eight of whom are women, appointed by the chief executive officer or his or her designee. Members of the committee shall be persons interested in health care, the promotion of breast cancer screening, and cervical cancer and shall be drawn from both the private sector and the public sector. At least one member shall be a person who has or who has had breast cancer.

Of the initial members of the committee, four shall be appointed for terms of one year and four shall be appointed for terms of two years. Thereafter all appointments shall be for terms of two years. All members shall serve until their successors are appointed. No member shall serve more than two successive two-year terms. Vacancies in the membership of the committee for any cause shall be filled by appointment by the chief executive officer or his or her designee for the unexpired term.

Duties of the committee shall include, but not be limited to, encouraging payment of public and private funds to the Breast and Cervical Cancer Cash

Fund, researching and recommending to the department reimbursement limits, planning and implementing outreach and educational programs to Nebraska women, advising the department on its operation of the early detection of breast and cervical cancer grant from the United States Department of Health and Human Services, and encouraging payment of public and private funds to the fund. Members of the committee shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1991, LB 256, § 12; Laws 1995, LB 68, § 10; Laws 1995, LB 406, § 84; Laws 1996, LB 1044, § 772; Laws 2007, LB296, § 668; Laws 2008, LB797, § 25; Laws 2020, LB381, § 72.

ARTICLE 71

CRITICAL INCIDENT STRESS MANAGEMENT

Section
71-7104. Critical Incident Stress Management Program; created; duties.

71-7104 Critical Incident Stress Management Program; created; duties.

There is hereby created the Critical Incident Stress Management Program. The focus of the program shall be to minimize the harmful effects of critical incident stress for emergency service personnel, with a high priority on confidentiality and respect for the individuals involved. The program shall:

(1) Provide a stress management session to emergency service personnel who appropriately request such assistance in an effort to address critical incident stress;

(2) Assist in providing the emotional and educational support necessary to ensure optimal functioning of emergency service personnel;

(3) Conduct preincident educational programs to acquaint emergency service personnel with stress management techniques;

(4) Promote interagency cooperation;

(5) Provide an organized statewide response to the emotional needs of emergency service personnel impacted by critical incidents;

(6) Develop guidelines for resilience training for first responders under section 48-101.01;

(7) Set reimbursement rates for resilience training under section 48-101.01; and

(8) Set an annual limit on the hours or quantity of resilience training for which reimbursement is required under section 48-101.01.

Source: Laws 1991, LB 703, § 4; Laws 1997, LB 184, § 4; Laws 2020, LB963, § 3.

ARTICLE 74

WHOLESALE DRUG DISTRIBUTOR LICENSING

Section
71-7436. Emergency medical reasons, defined.
71-7444. Wholesale drug distribution, defined.

71-7436 Emergency medical reasons, defined.

(1) Emergency medical reasons means the alleviation of a temporary shortage by transfers of prescription drugs between any of the following: (a) Holders

of pharmacy licenses, (b) health care practitioner facilities as defined in section 71-414, (c) hospitals as defined in section 71-419, and (d) emergency medical services as defined in section 38-1207.

(2) Emergency medical reasons does not include regular and systematic sales (a) of prescription drugs to emergency medical services as defined in section 38-1207 or (b) to practitioners as defined in section 38-2838 of prescription drugs that will be used for routine office procedures.

Source: Laws 1992, LB 1019, § 9; Laws 1998, LB 1073, § 157; Laws 2001, LB 398, § 82; R.S.1943, (2003), § 71-7409; Laws 2006, LB 994, § 10; Laws 2007, LB463, § 1294; Laws 2015, LB37, § 89; Laws 2020, LB1002, § 47.

71-7444 Wholesale drug distribution, defined.

(1) Wholesale drug distribution means the distribution of prescription drugs to a person other than a consumer or patient.

(2) Wholesale drug distribution does not include:

(a) Intracompany sales of prescription drugs, including any transaction or transfer between any division, subsidiary, or parent company and an affiliated or related company under common ownership or common control;

(b) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, a state, a political subdivision, or any other governmental agency to a nonprofit affiliate of the organization, to the extent otherwise permitted by law;

(c) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities operating under common ownership or common control;

(d) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons or for a practitioner to use for routine office procedures, not to exceed five percent of sales as provided in section 71-7454;

(e) The sale, purchase, or trade of, an offer to sell, purchase, or trade, or the dispensing of a prescription drug pursuant to a prescription;

(f) The distribution of drug samples by representatives of a manufacturer or of a wholesale drug distributor;

(g) The sale, purchase, or trade of blood and blood components intended for transfusion;

(h) The delivery of or the offer to deliver a prescription drug by a common carrier solely in the usual course of business of transporting such drugs as a common carrier if the common carrier does not store, warehouse, or take legal ownership of such drugs; or

(i) The restocking of prescription drugs by a hospital for an emergency medical service as defined in section 38-1207 if the emergency medical service transports a patient to the hospital and such drugs were used for the patient prior to or during transportation of such patient to such hospital.

(3) Except as provided in subdivision (2)(c) of this section, wholesale drug distribution includes (a) the restocking of prescription drugs by a hospital for an emergency medical service as defined in section 38-1207 if such prescription

drugs were not used for a patient prior to or during transportation to such hospital or (b) the general stocking of prescription drugs for an emergency medical service as defined in section 38-1207.

Source: Laws 1992, LB 1019, § 12; Laws 1995, LB 574, § 60; R.S.1943, (2003), § 71-7412; Laws 2006, LB 994, § 18; Laws 2015, LB37, § 90; Laws 2020, LB1002, § 48.

ARTICLE 76

HEALTH CARE

(b) NEBRASKA HEALTH CARE FUNDING ACT

(b) NEBRASKA HEALTH CARE FUNDING ACT

71-7611 Nebraska Health Care Cash Fund; created; use; investment; report.

(1) The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer (a) sixty million three hundred thousand dollars on or before July 15, 2014, (b) sixty million three hundred fifty thousand dollars on or before July 15, 2015, (c) sixty million three hundred fifty thousand dollars on or before July 15, 2016, (d) sixty million seven hundred thousand dollars on or before July 15, 2017, (e) five hundred thousand dollars on or before May 15, 2018, (f) sixty-one million six hundred thousand dollars on or before July 15, 2018, (g) sixty-two million dollars on or before July 15, 2019, (h) sixty-one million four hundred fifty thousand dollars on or before July 15, 2020, (i) sixty-six million two hundred thousand dollars on or before July 15, 2022, and (j) fifty-one million dollars on or before every July 15 thereafter from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund, except that such amount shall be reduced by the amount of the unobligated balance in the Nebraska Health Care Cash Fund at the time the transfer is made. The state investment officer shall advise the State Treasurer on the amounts to be transferred first from the Nebraska Medicaid Intergovernmental Trust Fund until the fund balance is depleted and from the Nebraska Tobacco Settlement Trust Fund thereafter in order to sustain such transfers in perpetuity. The state investment officer shall report electronically to the Legislature on or before October 1 of every even-numbered year on the sustainability of such transfers. The Nebraska Health Care Cash Fund shall also include money received pursuant to section 77-2602. Except as otherwise provided by law, no more than the amounts specified in this subsection may be appropriated or transferred from the Nebraska Health Care Cash Fund in any fiscal year.

The State Treasurer shall transfer ten million dollars from the Nebraska Medicaid Intergovernmental Trust Fund to the General Fund on June 28, 2018, and June 28, 2019.

Except as otherwise provided in subsections (6) and (7) of this section, it is the intent of the Legislature that no additional programs are funded through the Nebraska Health Care Cash Fund until funding for all programs with an appropriation from the fund during FY2012-13 are restored to their FY2012-13 levels.

(2) Any money in the Nebraska Health Care Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) The University of Nebraska and postsecondary educational institutions having colleges of medicine in Nebraska and their affiliated research hospitals in Nebraska, as a condition of receiving any funds appropriated or transferred from the Nebraska Health Care Cash Fund, shall not discriminate against any person on the basis of sexual orientation.

(4) The State Treasurer shall transfer fifty thousand dollars on or before July 15, 2016, from the Nebraska Health Care Cash Fund to the Board of Regents of the University of Nebraska for the University of Nebraska Medical Center. It is the intent of the Legislature that these funds be used by the College of Public Health for workforce training.

(5) It is the intent of the Legislature that the cost of the staff and operating costs necessary to carry out the changes made by Laws 2018, LB439, and not covered by fees or federal funds shall be funded from the Nebraska Health Care Cash Fund for fiscal years 2018-19 and 2019-20.

(6) It is the intent of the Legislature to fund the grants to be awarded pursuant to section 75-1101 with the Nebraska Health Care Cash Fund for FY2019-20 and FY2020-21.

(7) The State Treasurer shall transfer fifteen million dollars from the Nebraska Health Care Cash Fund on or after July 1, 2022, but before June 30, 2023, to the Board of Regents of the University of Nebraska for the University of Nebraska Medical Center for pancreatic cancer research at the University of Nebraska Medical Center. Transfers from the Nebraska Health Care Cash Fund in this subsection shall be contingent upon receipt of any matching funds from private or other sources, up to fifteen million dollars, certified by the budget administrator of the budget division of the Department of Administrative Services. Upon receipt of any matching funds certified by the budget administrator, the State Treasurer shall transfer an equal amount of funds to the Board of Regents of the University of Nebraska.

Source: Laws 1998, LB 1070, § 7; Laws 2000, LB 1427, § 9; Laws 2001, LB 692, § 18; Laws 2003, LB 412, § 8; Laws 2004, LB 1091, § 7; Laws 2005, LB 426, § 12; Laws 2007, LB322, § 19; Laws 2007, LB482, § 6; Laws 2008, LB480, § 2; Laws 2008, LB830, § 9; Laws 2008, LB961, § 5; Laws 2009, LB27, § 7; Laws 2009, LB316, § 19; Laws 2012, LB782, § 125; Laws 2012, LB969, § 9; Laws 2013, LB199, § 29; Laws 2014, LB906, § 18; Laws 2015, LB390, § 12; Laws 2015, LB661, § 32; Laws 2017, LB331, § 38; Laws 2018, LB439, § 9; Laws 2018, LB793, § 10; Laws 2018, LB945, § 17; Laws 2019, LB298, § 17; Laws 2019, LB481, § 7; Laws 2019, LB570, § 1; Laws 2019, LB600, § 19; Laws 2019, LB641, § 2; Laws 2021, LB384, § 12; Laws 2022, LB1012, § 11. Effective date April 5, 2022.

Cross References

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

ARTICLE 78
PRIMARY CARE INVESTMENT ACT

71-7801 Act, how cited.

Sections 71-7801 to 71-7807 shall be known and may be cited as the Primary Care Investment Act.

Source: Laws 2022, LB863, § 11.
Operative date July 21, 2022.

71-7802 Federal Consolidated Appropriations Act, 2021; requirements; Primary Care Investment Council; purpose.

On December 27, 2020, the federal Consolidated Appropriations Act, 2021, Public Law 116-260, became law. It requires group health plans, health insurance issuers, and health insurance plans to provide data to the federal government on the total amount of spending on hospital costs; health care provider and clinical service costs, for primary care and specialty care separately; costs for prescription drugs; and other medical costs, including wellness services. Primary care is important to the health of individuals and has been associated with better health outcomes at lower costs. The purpose of the Primary Care Investment Council is to analyze the data collected by the federal government in accordance with the federal Consolidated Appropriations Act, 2021, and other data sources, to assist the Legislature in understanding:

(1) The current amount of health care spending on primary care in Nebraska from public and private sources;

(2) Barriers to residents of Nebraska accessing primary care;

(3) Barriers to health payors and medical providers in investing in primary care;

(4) Alternative payment models that deliver high-quality care and spend health care dollars more wisely;

(5) The public health benefits for Nebraska residents if the level of primary care investment in Nebraska increased;

(6) The estimated cost savings for health care consumers as well as public and private payors if the level of primary care investment increased in Nebraska;

(7) Nebraska's investment in primary care services relative to other states; and

(8) Health outcomes in Nebraska relative to other states.

Source: Laws 2022, LB863, § 12.
Operative date July 21, 2022.

71-7803 Terms, defined.

For purposes of the Primary Care Investment Act:

(1) Department means the Department of Insurance; and

(2) Primary care physician means a physician licensed under the Uniform Credentialing Act and practicing in the area of family medicine, pediatrics, internal medicine, geriatrics, obstetrics and gynecology, or general medicine.

Source: Laws 2022, LB863, § 13.
Operative date July 21, 2022.

Cross References

Uniform Credentialing Act, see section 38-101.

71-7804 Primary Care Investment Council; created; members; termination.

(1) The Primary Care Investment Council is created. The council shall consist of fifteen voting members and two ex officio, nonvoting members.

(2) The Primary Care Investment Council shall consist of the following voting members:

(a) Three representatives of primary care physicians, one representing each congressional district;

(b) A representative of behavioral health providers;

(c) A representative of hospitals;

(d) A representative of academia with experience in health care data;

(e) Two other representatives of health providers who are not primary care physicians or hospitals;

(f) Three representatives of health insurers, one of which shall be a representative of a managed care organization;

(g) One representative of large employers that purchase health insurance for employees, which representative is not an insurer;

(h) One representative of small employers that purchase group health insurance for employees, which representative is not an insurer;

(i) One health care consumer advocate who is knowledgeable about the private health insurance market; and

(j) A representative of organizations that facilitate health information exchange in Nebraska.

(3) The following officials or their designees shall serve as ex officio, nonvoting members:

(a) The Director of Insurance; and

(b) The Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services.

(4) The Governor shall appoint the voting members of the council. The Governor shall appoint the initial members by October 1, 2022. Any member who ceases to meet the requirements for his or her appointment regarding representation or practice shall cease to be a member of the council. Any vacancy shall be filled in the same manner as the original appointment.

(5) The council shall select one of its members to serve as chairperson for a one-year term. The council shall conduct its organizational meeting in October 2022.

(6) The council shall terminate on July 1, 2029.

Source: Laws 2022, LB863, § 14.
Operative date July 21, 2022.

71-7805 Primary Care Investment Council; duties.

The Primary Care Investment Council shall:

(1) Develop an appropriate definition for primary care investment;

(2) Measure the current level of primary care investment, measured as a part of overall health care spending, by public and private payors in Nebraska;

(3) Conduct a comparison of spending on primary care services and health outcomes in Nebraska with surrounding states and nationally;

(4) Develop an appropriate target level of primary care investment by public and private payors in Nebraska;

(5) Recommend strategies to achieve the target level of primary care investment through alternative payment models;

(6) Identify the public health benefits and estimated cost savings that would result from meeting the target level of primary care investment through alternative payment models; and

(7) Identify solutions to barriers for Nebraska residents from accessing primary care and for health payors and medical providers from investing in primary care.

Source: Laws 2022, LB863, § 15.
Operative date July 21, 2022.

71-7806 Primary Care Investment Council; convene; review and update.

The Primary Care Investment Council shall convene at least once a year through 2028 to review the state's progress in meeting the target level of primary care investment, update the data regarding public health benefits and cost savings as a result of investments in primary care, update the strategies to achieve the target level of primary care investment, and consider other information as necessary.

Source: Laws 2022, LB863, § 16.
Operative date July 21, 2022.

71-7807 Primary Care Investment Council; report.

On or before November 1, 2023, and on or before each November 1 until November 1, 2028, the Primary Care Investment Council shall prepare and the department shall electronically submit a report to the Executive Board of the Legislative Council and the Governor which contains, at a minimum, the Primary Care Investment Council's findings under section 71-7805 and any additional findings from the council regarding health care spending and health outcomes.

Source: Laws 2022, LB863, § 17.
Operative date July 21, 2022.

ARTICLE 79

HEALTH CARE QUALITY IMPROVEMENT ACT

(b) HEALTH CARE QUALITY IMPROVEMENT ACT

(b) HEALTH CARE QUALITY IMPROVEMENT ACT

71-7904 Act, how cited.

Sections 71-7904 to 71-7913 shall be known and may be cited as the Health Care Quality Improvement Act.

Source: Laws 2011, LB431, § 1; Laws 2019, LB119, § 1.

71-7906 Definitions, where found.

For purposes of the Health Care Quality Improvement Act, the definitions found in sections 71-7907 to 71-7910.01 apply.

Source: Laws 2011, LB431, § 3; Laws 2019, LB119, § 2.

71-7907 Health care provider, defined.

Health care provider means:

(1) A facility licensed under the Health Care Facility Licensure Act;

(2) A health care professional licensed under the Uniform Credentialing Act;

(3) A professional health care service entity; and

(4) An organization or association of health care professionals licensed under the Uniform Credentialing Act.

Source: Laws 2011, LB431, § 4; Laws 2019, LB119, § 3.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

71-7910 Peer review committee, defined; policies and procedures.

(1) Peer review committee means a utilization review committee, quality assessment committee, performance improvement committee, tissue committee, credentialing committee, or other committee established by a professional health care service entity or by the governing board of a facility which is a health care provider that does either of the following:

(a) Conducts professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by a health care provider, including both an individual who provides health care and an entity that provides health care; or

(b) Conducts any other attendant hearing process initiated as a result of a peer review committee's recommendations or actions.

(2) To conduct peer review pursuant to the Health Care Quality Improvement Act, a professional health care service entity shall adopt and adhere to written policies and procedures governing the peer review committee of the professional health care service entity.

Source: Laws 2011, LB431, § 7; Laws 2019, LB119, § 5.

71-7910.01 Professional health care service entity, defined.

Professional health care service entity means an entity which is organized under the Nebraska Nonprofit Corporation Act, the Nebraska Professional Corporation Act, the Nebraska Uniform Limited Liability Company Act, or the Uniform Partnership Act of 1998 and which renders health care services through individuals credentialed under the Uniform Credentialing Act.

Source: Laws 2019, LB119, § 4; Laws 2020, LB783, § 3.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.
Nebraska Professional Corporation Act, see section 21-2201.
Nebraska Uniform Limited Liability Company Act, see section 21-101.
Uniform Credentialing Act, see section 38-101.
Uniform Partnership Act of 1998, see section 67-401.

71-7911 Liability for activities relating to peer review.

(1) A health care provider or an individual (a) serving as a member or employee of a peer review committee, working on behalf of a peer review committee, furnishing counsel or services to a peer review committee, or participating in a peer review activity as an officer, director, employee, or member of a professional health care service entity or an officer, director, employee, or member of the governing board of a facility which is a health care provider and (b) acting without malice shall not be held liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of a peer review committee.

(2) A person who makes a report or provides information to a peer review committee shall not be subject to suit as a result of providing such information if such person acts without malice.

Source: Laws 2011, LB431, § 8; Laws 2019, LB119, § 6.

71-7912 Confidentiality; discovery; availability of medical records, documents, or information; limitation; burden of proof.

(1) The proceedings, records, minutes, and reports of a peer review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action. No person who attends a meeting of a peer review committee, works for or on behalf of a peer review committee, provides information to a peer review committee, or participates in a peer review activity as an officer, director, employee, or member of a professional health care service entity or an officer, director, employee, or member of the governing board of a facility which is a health care provider shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings or activities of the peer review

committee or as to any findings, recommendations, evaluations, opinions, or other actions of the peer review committee or any members thereof.

(2) Nothing in this section shall be construed to prevent discovery or use in any civil action of medical records, documents, or information otherwise available from original sources and kept with respect to any patient in the ordinary course of business, but the records, documents, or information shall be available only from the original sources and cannot be obtained from the peer review committee's proceedings or records.

(3) A health care provider or individual claiming the privileges under this section has the burden of proving that the communications and documents are protected.

Source: Laws 2011, LB431, § 9; Laws 2019, LB119, § 7.

71-7913 Incident report or risk management report; how treated; burden of proof.

(1) An incident report or risk management report and the contents of an incident report or risk management report are not subject to discovery in, and are not admissible in evidence in the trial of, a civil action for damages for injury, death, or loss to a patient of a health care provider. A person who prepares or has knowledge of the contents of an incident report or risk management report shall not testify and shall not be required to testify in any civil action as to the contents of the report.

(2) A health care provider or individual claiming the privileges under this section has the burden of proving that the communications and documents are protected.

Source: Laws 2011, LB431, § 10; Laws 2019, LB119, § 8.

ARTICLE 82

STATEWIDE TRAUMA SYSTEM ACT

Section
71-8226. Physician medical director, defined.
71-8227. Qualified physician surrogate, defined.
71-8236. State Trauma Advisory Board; created; members; terms; expenses.
71-8237. State Trauma Advisory Board; duties.
71-8240. Department; statewide duties.
71-8248. Statewide trauma registry.
71-8249. Statewide trauma registry; data; confidentiality.
71-8251. Regional trauma advisory boards; established; members; expenses.
71-8253. Act; how construed.

71-8226 Physician medical director, defined.

Physician medical director means a qualified physician who is responsible for the medical supervision of emergency care providers and verification of skill proficiency of emergency care providers.

Source: Laws 1997, LB 626, § 26; Laws 2020, LB1002, § 49.

71-8227 Qualified physician surrogate, defined.

Qualified physician surrogate means a qualified, trained medical person, designated by a qualified physician in writing to act as an agent for the physician in directing the actions of emergency care providers.

Source: Laws 1997, LB 626, § 27; Laws 2020, LB1002, § 50.

71-8236 State Trauma Advisory Board; created; members; terms; expenses.

The State Trauma Advisory Board is created. The board shall be composed of representatives knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, prehospital or emergency care providers, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The Director of Public Health or his or her designee shall appoint the members of the board for staggered terms of three years each. The department shall provide administrative support to the board. All members of the board may be reimbursed for expenses incurred in the performance of their duties as such members as provided in sections 81-1174 to 81-1177. The terms of members representing the same field shall not expire at the same time.

The board shall elect a chairperson and a vice-chairperson whose terms of office shall be for two years. The board shall meet at least twice per year by written request of the director or the chairperson.

Source: Laws 1997, LB 626, § 36; Laws 1998, LB 898, § 1; Laws 1999, LB 594, § 64; Laws 2007, LB296, § 691; Laws 2020, LB381, § 73; Laws 2020, LB1002, § 51.

71-8237 State Trauma Advisory Board; duties.

The State Trauma Advisory Board shall:

(1) Advise the department regarding trauma care needs throughout the state;

(2) Advise the Board of Emergency Medical Services regarding trauma care to be provided throughout the state by emergency medical services;

(3) Review the regional trauma plans and recommend changes to the department before the department adopts the plans;

(4) Review proposed departmental rules and regulations for trauma care;

(5) Recommend modifications in rules regarding trauma care; and

(6) Draft a five-year statewide prevention plan that each trauma care region shall implement.

Source: Laws 1997, LB 626, § 37; Laws 2009, LB195, § 99; Laws 2020, LB1002, § 52.

71-8240 Department; statewide duties.

The department shall establish and maintain the following on a statewide basis:

(1) Trauma system objectives and priorities;

(2) Minimum trauma standards for facilities, equipment, and personnel for advanced, basic, comprehensive, and general level trauma centers and specialty level burn or pediatric trauma centers;

(3) Minimum standards for facilities, equipment, and personnel for advanced, intermediate, and general level rehabilitation centers;

(4) Minimum trauma standards for the development of facility patient care protocols;

(5) Trauma care regions as provided for in section 71-8250;

(6) Recommendations for an effective trauma transportation system;

(7) The minimum number of hospitals and health care facilities in the state and within each trauma care region that may provide designated trauma care services based upon approved regional trauma plans;

(8) The minimum number of prehospital or emergency care providers in the state and within each trauma care region that may provide trauma care services based upon approved regional trauma plans;

(9) A format for submission of the regional trauma plans to the department;

(10) A program for emergency medical services and trauma care research and development;

(11) Review and approve regional trauma plans;

(12) The initial designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the approved regional trauma plan; and

(13) The trauma implementation plan incorporating the regional trauma plans.

Source: Laws 1997, LB 626, § 40; Laws 2009, LB195, § 101; Laws 2015, LB46, § 9; Laws 2020, LB1002, § 53.

71-8248 Statewide trauma registry.

The department shall establish and maintain a statewide trauma registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The registry shall be used to improve the availability and delivery of prehospital or emergency care and hospital trauma care services. Specific data elements of the registry shall be defined by rule and regulation of the department. Every health care facility designated as an advanced, a basic, a comprehensive, or a general level trauma center, a specialty level burn or pediatric trauma center, an advanced, an intermediate, or a general level rehabilitation center, or a prehospital or emergency care provider shall furnish data to the registry. All other hospitals may furnish trauma data as required by the department by rule and regulation. All hospitals involved in the care of a trauma patient shall have unrestricted access to all prehospital reports for the trauma registry for that specific trauma occurrence.

Source: Laws 1997, LB 626, § 48; Laws 2009, LB195, § 108; Laws 2015, LB46, § 12; Laws 2020, LB1002, § 54.

71-8249 Statewide trauma registry; data; confidentiality.

(1) All data collected under section 71-8248 shall be held confidential pursuant to sections 81-663 to 81-675. Confidential patient medical record data shall only be released as (a) Class I, II, or IV medical records under sections 81-663 to 81-675, (b) aggregate or case-specific data to the regional trauma system quality assurance program and the regional trauma advisory boards, (c) protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2008, and (d) protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2008, to an emergency medical service, to an emergency care provider, to a licensed health care facility, or to a center that will treat or has treated a specific patient.

A record may be shared with the emergency medical service, the emergency care provider, the licensed health care facility, or center that reported that specific record.

(2) Patient care quality assurance proceedings, records, and reports developed pursuant to this section and section 71-8248 are confidential and are not subject to discovery by subpoena or admissible as evidence in any civil action, except pursuant to a court order which provides for the protection of sensitive information of interested parties, including the department, pursuant to section 25-12,123.

Source: Laws 1997, LB 626, § 49; Laws 2007, LB185, § 46; Laws 2008, LB797, § 27; Laws 2020, LB1002, § 55.

71-8251 Regional trauma advisory boards; established; members; expenses.

The department shall establish a regional trauma advisory board within each trauma care region. The department shall appoint members, to be comprised of a balance of hospital representatives and emergency care providers, local elected officials, consumers, local law enforcement representatives, and local government agencies involved in the delivery of emergency medical services and trauma care recommended by the local emergency medical services providers and medical facilities located within the region. All members of the board may be reimbursed for expenses incurred in the performance of their duties as such members pursuant to sections 81-1174 to 81-1177.

Source: Laws 1997, LB 626, § 51; Laws 2020, LB381, § 74; Laws 2020, LB1002, § 56.

71-8253 Act; how construed.

(1) If there are conflicts between the Statewide Trauma System Act and the Emergency Medical Services Practice Act pertaining to emergency medical services, the Emergency Medical Services Practice Act shall control.

(2) Nothing in the Statewide Trauma System Act shall limit a patient's right to choose the physician, hospital, facility, rehabilitation center, specialty level burn or pediatric trauma center, or other provider of health care services.

Source: Laws 1997, LB 626, § 53; Laws 2007, LB463, § 1305; Laws 2020, LB1002, § 57.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

ARTICLE 84
MEDICAL RECORDS

Section
71-8402. Terms, defined.

71-8402 Terms, defined.

For purposes of sections 71-8401 to 71-8407:

(1) Medical records means a provider's record of a patient's health history and treatment rendered;

(2) Mental health medical records means medical records or parts thereof created by or under the direction or supervision of a licensed psychiatrist, a

licensed psychologist, a mental health practitioner licensed or certified pursuant to the Mental Health Practice Act, or a professional counselor who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact;

(3) Patient includes a patient or former patient;

(4) Patient request or request of a patient includes the request of a patient's guardian or other authorized representative; and

(5) Provider means a physician, psychologist, chiropractor, dentist, hospital, clinic, and any other licensed or certified health care practitioner or entity.

Source: Laws 1999, LB 17, § 2; Laws 2007, LB247, § 56; Laws 2007, LB463, § 1306; Laws 2022, LB752, § 29.
Effective date July 21, 2022.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Mental Health Practice Act, see section 38-2101.

ARTICLE 85

TELEHEALTH SERVICES

(a) NEBRASKA TELEHEALTH ACT

Section
71-8503. Terms, defined.
71-8505. Written information; signed statement or verbal consent; requirements.

(a) NEBRASKA TELEHEALTH ACT

71-8503 Terms, defined.

For purposes of the Nebraska Telehealth Act:

(1) Department means the Department of Health and Human Services;

(2) Health care practitioner means a Nebraska medicaid-enrolled provider who is licensed, registered, or certified to practice in this state by the department;

(3)(a) Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care practitioner in the diagnosis or treatment of a patient.

(b) Telehealth includes (i) services originating from a patient's home or any other location where such patient is located, (ii) asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care practitioner at another site for medical evaluation, and (iii) telemonitoring.

(c) Telehealth also includes audio-only services for the delivery of individual behavioral health services for an established patient, when appropriate, or crisis management and intervention for an established patient as allowed by federal law;

(4) Telehealth consultation means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth; and

(5) Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care practitioner for analysis and storage.

Source: Laws 1999, LB 559, § 3; Laws 2007, LB296, § 695; Laws 2014, LB1076, § 1; Laws 2021, LB400, § 3.

71-8505 Written information; signed statement or verbal consent; requirements.

(1) Prior to an initial telehealth consultation under section 71-8506, a health care practitioner who delivers a health care service to a patient through telehealth shall ensure that the following written information is provided to the patient:

(a) A statement that the patient retains the option to refuse the telehealth consultation at any time without affecting the patient's right to future care or treatment and without risking the loss or withdrawal of any program benefits to which the patient would otherwise be entitled;

(b) A statement that all existing confidentiality protections shall apply to the telehealth consultation;

(c) A statement that the patient shall have access to all medical information resulting from the telehealth consultation as provided by law for patient access to his or her medical records; and

(d) A statement that dissemination of any patient identifiable images or information from the telehealth consultation to researchers or other entities shall not occur without the written consent of the patient.

(2) The patient shall sign a statement prior to or during an initial telehealth consultation, or give verbal consent during the telehealth consultation, indicating that the patient understands the written information provided pursuant to subsection (1) of this section and that this information has been discussed with the health care practitioner or the practitioner's designee. The signed statement may be collected by paper or electronic signature and shall become a part of the patient's medical record. If the patient gives verbal consent during the initial telehealth consultation, the signed statement shall be collected within ten days after such telehealth consultation.

(3) If the patient is a minor or is incapacitated or mentally incompetent such that he or she is unable to sign the statement or give verbal consent as required by subsection (2) of this section, such statement shall be signed, or such verbal consent given, by the patient's legally authorized representative.

(4) This section shall not apply in an emergency situation in which the patient is unable to sign the statement or give verbal consent as required by subsection (2) of this section and the patient's legally authorized representative is unavailable.

Source: Laws 1999, LB 559, § 5; Laws 2021, LB400, § 4.

ARTICLE 86

BLIND AND VISUALLY IMPAIRED

Section

Section
71-8611. Vending facilities; license; priority status.

71-8604 Commission for the Blind and Visually Impaired; created; per diem; expenses.

(1) The Commission for the Blind and Visually Impaired is created. The governing board of the commission shall consist of five members appointed by the Governor with the approval of a majority of the members of the Legislature. All board members shall have reasonable knowledge or experience in issues related to blindness which may include, but is not limited to, reasonable knowledge or experience acquired through membership in consumer organizations of the blind. No board member or his or her immediate family shall be a current employee of the commission. At least three board members shall be blind persons: One member shall be a member or designee of the National Federation of the Blind of Nebraska; one member shall be a member or designee of the American Council of the Blind of Nebraska; and one member may be a member of another consumer organization of the blind.

(2) Board members shall be appointed for staggered terms with the initial members appointed for terms as follows: Two members for terms ending on December 31, 2001, and three members for terms ending December 31, 2003. Subsequent appointments shall be for terms of four years with no board member appointed to more than two consecutive terms. Board members whose terms have expired shall continue to serve until their successors have been appointed. In the case of a vacancy, the Governor shall appoint a successor for the unexpired term. Board members may be removed for cause.

(3) A majority of the board members constitutes a quorum for the transaction of business. The board shall annually elect a chairperson from its membership.

(4) Board members shall receive a per diem of seventy dollars for each day spent in the performance of their official duties and shall be reimbursed for expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177. Aside from the provisions of this subsection, a board member shall not receive other compensation, perquisites, or allowances for the performance of official duties.

Source: Laws 2000, LB 352, § 4; Laws 2020, LB381, § 75.

71-8607 Commission; powers and duties.

(1) The commission shall:

(a) Apply for, receive, and administer money from any state or federal agency to be used for purposes relating to blindness, including federal funds relating to vocational rehabilitation of blind persons as provided in subsection (1) of section 71-8610;

(b) Receive on behalf of the state any gifts, donations, or bequests from any source to be used in carrying out the purposes of the Commission for the Blind and Visually Impaired Act;

(c) Promote self-support of blind persons as provided in sections 71-8608, 71-8609, and 71-8611;

(d) Provide itinerant training of alternative skills of blindness, including, but not limited to, braille, the long white cane for independent travel, adaptive technology, and lifestyle maintenance;

(e) Establish, equip, and maintain a residential training center with qualified instructors for comprehensive prevocational training of eligible blind persons. The center shall also provide comprehensive independent living training as well as orientation and adjustment counseling for blind persons;

(f) Administer and operate a vending facility program in the state, in its capacity as the designated licensing agency pursuant to the federal Randolph-Sheppard Act, as the act existed on January 1, 2019, 20 U.S.C. 107 et seq., for the benefit of blind persons;

(g) Contract for the purchase of information services for blind persons; and

(h) Perform other duties necessary to fulfill the purposes of the Commission for the Blind and Visually Impaired Act.

(2) The commission may perform educational services relating to blindness and may cooperate and consult with other public and private agencies relating to educational issues.

Source: Laws 2000, LB 352, § 7; Laws 2019, LB220, § 1.

71-8611 Vending facilities; license; priority status.

For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of blind persons, and stimulating blind persons to greater efforts in striving to make themselves self-supporting, the commission shall administer and operate vending facilities programs pursuant to the federal Randolph-Sheppard Act, as the act existed on January 1, 2019, 20 U.S.C. 107 et seq. Blind persons licensed by the commission pursuant to its rules and regulations are authorized to operate vending facilities in any federally owned building or on any federally owned or controlled property, in any state-owned building or on any property owned or controlled by the state, or on any property owned or controlled by any county, city, or municipality with the approval of the local governing body, when, in the judgment of the director of the commission, such vending facilities may be properly and satisfactorily operated by blind persons. With respect to vending facilities in any state-owned building or on any property owned or controlled by the state, priority shall be given to blind persons, except that this shall not apply to the Game and Parks Commission or the University of Nebraska. If a blind person is selected to operate vending facilities in such building or on such property, he or she shall do so on a rent-free basis and offer products at prices comparable to similar products sold in similar buildings or on similar property.

Source: Laws 1961, c. 443, § 1, p. 1363; Laws 1973, LB 32, § 1; Laws 1976, LB 674, § 3; Laws 1996, LB 1044, § 929; R.S.1943, (1999), § 83-210.03; Laws 2000, LB 352, § 11; Laws 2004, LB 1005, § 134; Laws 2012, LB858, § 4; Laws 2019, LB220, § 2.

ARTICLE 87

PATIENT SAFETY IMPROVEMENT ACT

Section
71-8701. Act, how cited.
71-8722. Patient Safety Cash Fund; created; use; investment.

71-8701 Act, how cited.

Sections 71-8701 to 71-8722 shall be known and may be cited as the Patient Safety Improvement Act.

Source: Laws 2005, LB 361, § 1; Laws 2019, LB25, § 2.

71-8722 Patient Safety Cash Fund; created; use; investment.

The Patient Safety Cash Fund is created. The Patient Safety Cash Fund shall only be used to support the activities of a patient safety organization. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2019, LB25, § 3.

Cross References

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

ARTICLE 88

STEM CELL RESEARCH ACT

Section
71-8803. Stem Cell Research Advisory Committee; created; qualifications; terms; meetings; stipend; expenses.

71-8803 Stem Cell Research Advisory Committee; created; qualifications; terms; meetings; stipend; expenses.

(1) The Stem Cell Research Advisory Committee is created. The committee shall consist of the dean of every medical school in Nebraska that is accredited by the Liaison Committee on Medical Education or his or her designee and additional members appointed as follows: (a) The dean of every medical school in Nebraska shall nominate three scientists from outside Nebraska conducting human stem cell research with funding from the National Institutes of Health of the United States Department of Health and Human Services; and (b) the chief medical officer as designated in section 81-3115 shall select two of such scientists from each set of nominations to serve on the committee. Appointments by the chief medical officer pursuant to this subsection shall be approved by the Legislature. Members appointed by the chief medical officer shall serve for staggered terms of three years each and until their successors are appointed and qualified. Such members may be reappointed for additional three-year terms.

(2) The committee shall meet not less than twice each year.

(3) Members of the committee not employed by medical schools in Nebraska shall receive a stipend per meeting to be determined by the Division of Public Health of the Department of Health and Human Services based on standard consultation fees, and all members of the committee shall be reimbursed for expenses incurred in service on the committee pursuant to sections 81-1174 to 81-1177.

Source: Laws 2008, LB606, § 3; Laws 2020, LB381, § 76.

ARTICLE 89

VETERINARY DRUG DISTRIBUTION LICENSING ACT

Section
71-8901. Act, how cited.
71-8922.01. Veterinary legend drug; deceased prescriber; effect on distribution; limitations.

71-8901 Act, how cited.

Sections 71-8901 to 71-8929 shall be known and may be cited as the Veterinary Drug Distribution Licensing Act.

Source: Laws 2008, LB1022, § 1; Laws 2021, LB252, § 1.

71-8922.01 Veterinary legend drug; deceased prescriber; effect on distribution; limitations.

(1) Except as otherwise provided in this section, a veterinary drug distributor may refill and distribute a veterinary legend drug pursuant to a veterinary drug order issued on or after August 28, 2021, by a veterinarian licensed in this state pursuant to a bona fide veterinarian-client-patient relationship without the prescriber's authorization if the prescriber is deceased and continuation of the veterinary legend drug is necessary for the animal's health, safety, and welfare.

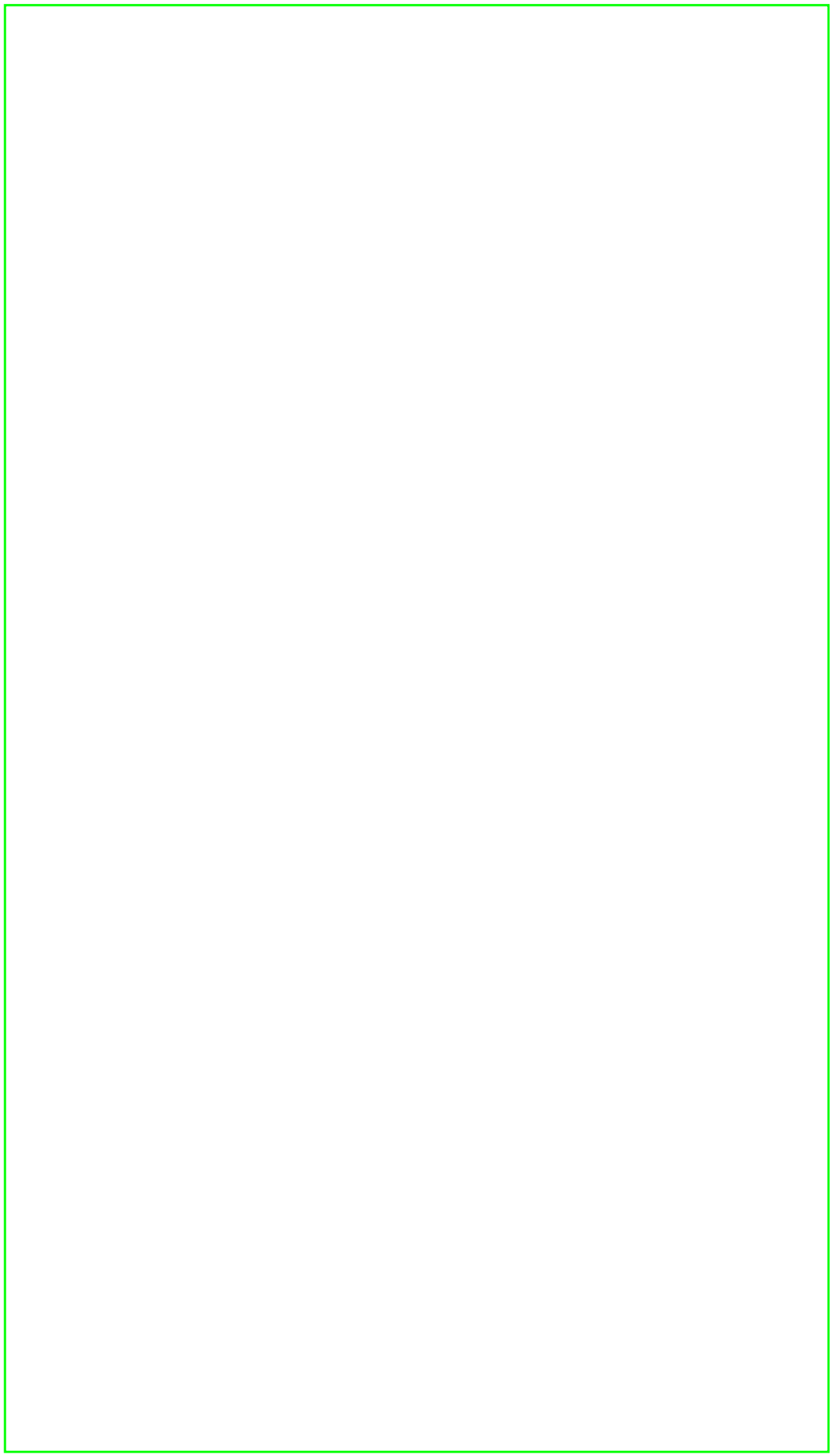
(2) A refill under this section shall be limited in quantity to the amount sufficient to maintain the animal's health, safety, and welfare until a bona fide veterinarian-client-patient relationship can be established with a licensed veterinarian, but in no event shall the quantity exceed a thirty-day supply.

(3) If a licensed veterinarian indicates on a veterinary drug order that no emergency refills are authorized, a veterinary drug distributor shall not dispense under this section pursuant to that veterinary drug order.

(4) This section does not apply to controlled substances.

(5) A veterinary drug distributor shall not be required to refill any veterinary drug order under this section and shall not be liable for any damages resulting from refilling a veterinary drug order issued by a licensed veterinarian under this section unless such damages are a result of the gross negligence of the veterinary drug distributor.

Source: Laws 2021, LB252, § 2.



CHAPTER 72
PUBLIC LANDS, BUILDINGS, AND FUNDS

Article.
2. School Lands and Funds. 72-201 to 72-235.
7. State Capital and Capitol Building. 72-729.01.
8. Public Buildings. 72-804 to 72-806.
10. Building Funds. 72-1005.
12. Investment of State Funds.
(a) Nebraska State Funds Investment Act. 72-1237 to 72-1250.01.
(d) Review of Nebraska Investment Council. 72-1277, 72-1278.
20. Niobrara River Corridor. 72-2007.
21. Governor's Residence. 72-2103.
22. Nebraska State Capitol Preservation and Restoration Act. 72-2201, 72-2215.

ARTICLE 2
SCHOOL LANDS AND FUNDS

Section
72-201. Board of Educational Lands and Funds; members; appointment; terms; compensation; expenses; duties; qualifications; organization; chairperson; meetings; secretary.
72-224.03. Condemnation proceedings; procedure; board; membership; appeal; award; filing; effect.
72-232. School lands; rules and regulations; soil conservation program.
72-233. School lands; application for lease; manner of leasing; bidding; conditions of lease.
72-234. School lands; lease; terms; period of lease.
72-234.01. Repealed. Laws 2021, LB528, § 74.
72-235. School lands; lease; default; notice; forfeiture.

72-201 Board of Educational Lands and Funds; members; appointment; terms; compensation; expenses; duties; qualifications; organization; chairperson; meetings; secretary.

(1) The Board of Educational Lands and Funds shall consist of five members to be appointed by the Governor with the consent of a majority of the members elected to the Legislature. One member shall be appointed from each of the congressional districts as the districts were constituted on January 1, 1961, and a fifth member shall be appointed from the state at large. One member of the board shall be competent in the field of investments. The initial members shall be appointed to take office on October 1, 1955, and shall hold office for the following periods of time: The member from the first congressional district for one year; the member from the second congressional district for two years; the member from the third congressional district for three years; the member from the fourth congressional district for four years; and the member from the state at large for five years. As the terms of the members expire, the Governor shall appoint or reappoint a member of the board for a term of five years, except members appointed to fill vacancies whose tenures shall be the unexpired terms for which they are appointed. If the Legislature is not in session when such members, or some of them, are appointed by the Governor, such members shall take office and act as recess appointees until the Legislature next thereafter

convenes. The compensation of the members shall be fifty dollars per day for each day's time actually engaged in the performance of the duties of their office. Each member shall be reimbursed for expenses incurred while upon business of the board as provided in sections 81-1174 to 81-1177. The board shall cause all school, university, agricultural college, and state college lands, owned by or the title to which may hereafter vest in the state, to be registered, leased, and sold as provided in sections 72-201 to 72-251 and shall have the general management and control of such lands and make necessary rules not provided by law. The funds arising from these lands shall be disposed of in the manner provided by the Constitution of Nebraska, sections 72-201 to 72-251, and other laws of Nebraska not inconsistent herewith.

(2) No person shall be eligible to membership on the board who is actively engaged in the teaching profession, who holds or has any financial interest in a school land lease, who is a holder of or a candidate for any state office or a member of any state board or commission, or who has not resided in this state for at least three years.

(3) The board shall elect one of its members as chairperson of the Board of Educational Lands and Funds. In the absence of the chairperson, any member of the board may, upon motion duly carried, act in his or her behalf as such chairperson. It shall keep a record of all proceedings and orders made by it. No order shall be made except upon the concurrence of at least three members of the board. It shall make all orders pertaining to the handling of all lands and funds set apart for educational purposes.

(4) The board shall maintain an office in Lincoln and shall meet in its office not less than once each month.

(5) The board may appoint a secretary for the board. The compensation of the secretary shall be payable monthly, as fixed by the board.

Source: Laws 1899, c. 69, § 1, p. 300; R.S.1913, § 5845; C.S.1922, § 5181; C.S.1929, § 72-201; Laws 1935, c. 163, § 1, p. 594; Laws 1937, c. 162, § 1, p. 628; C.S.Supp.,1941, § 72-201; R.S.1943, § 72-201; Laws 1945, c. 175, § 1, p. 559; Laws 1951, c. 338, § 3, p. 117; Laws 1953, c. 252, § 1, p. 857; Laws 1955, c. 276, § 1, p. 874; Laws 1955, c. 277, § 1, p. 877; Laws 1961, c. 282, § 5, p. 822; Laws 1965, c. 434, § 1, p. 1383; Laws 1969, c. 589, § 1, p. 2438; Laws 1981, LB 204, § 141; Laws 1999, LB 779, § 12; Laws 2011, LB332, § 1; Laws 2014, LB967, § 3; Laws 2020, LB381, § 77.

Cross References

Constitutional provisions:
Board of Educational Lands and Funds, duties, membership, see Article VII, section 6, Constitution of Nebraska.
Fees, see sections 25-1280 and 33-104.
Other provisions relating to the board, see Chapter 84, article 4.
State-owned geothermal resources, authority to lease, see section 66-1104.

72-224.03 Condemnation proceedings; procedure; board; membership; appeal; award; filing; effect.

Except as otherwise provided in section 72-222.02, any public body that has or hereafter shall be granted by the Legislature the authority to acquire educational lands for public use shall be required to condemn the interest of the state, as trustee for the public schools, in educational lands in the following manner:

(1) The proceedings shall be had before a board consisting of (a) the superintendent of a school district offering instruction in grades kindergarten through twelve, (b) a certified public accountant, and (c) a credentialed real property appraiser, all appointed by the Governor for a term of six years, except that of the initial appointees one shall serve for a term of two years, one for a term of four years, and one for a term of six years as designated by the Governor. The members of the board shall each receive fifty dollars for each day actually engaged in the performance of official duties and shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177 to be paid by the Board of Educational Lands and Funds;

(2) The condemnation proceedings shall be commenced by the filing of a plat and complete description of the lands to be acquired together with an application for that purpose with the secretary of the Board of Educational Lands and Funds. Notice of the pendency of such application and the date of hearing shall be given by serving a copy of the application, together with notice of the date of hearing, upon the Governor and the Attorney General. The date of hearing shall be not less than ten days from the date of the filing of the application;

(3) The condemner and the Board of Educational Lands and Funds may present evidence before the board of appraisers. The board shall have the power to administer oaths and subpoena witnesses at the request of either party or on its own motion;

(4) After hearing the evidence, the board of appraisers shall make the award and file same in the office of the Board of Educational Lands and Funds. Such award may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act; and

(5) Upon payment of the amount of the award by the condemner, it shall be the duty of the secretary of the Board of Educational Lands and Funds to transmit a certified copy of the award to the condemner for filing in the office of the register of deeds in the county or counties where the land is located. The filing of such certified copy of the award shall have the force and effect of a deed of conveyance of the real estate and shall constitute a transfer of the title thereto.

Source: Laws 1949, c. 213, § 1(3), p. 608; Laws 1951, c. 237, § 1, p. 843; Laws 1963, Spec. Sess., c. 17, § 3, p. 149; Laws 1967, c. 466, § 5, p. 1446; Laws 1969, c. 514, § 7, p. 2106; Laws 1979, LB 381, § 1; Laws 1981, LB 121, § 1; Laws 1981, LB 204, § 142; Laws 1988, LB 352, § 146; Laws 1990, LB 1153, § 56; Laws 1991, LB 203, § 3; Laws 1994, LB 1107, § 3; Laws 2006, LB 778, § 6; Laws 2020, LB381, § 78.

Cross References

Administrative Procedure Act, see section 84-920.

72-232 School lands; rules and regulations; soil conservation program.

The Board of Educational Lands and Funds shall have authority to adopt such rules and regulations as it shall deem necessary in the leasing of school lands and to prescribe such terms and conditions of the lease, not inconsistent with sections 72-205, 72-232 to 72-235, 72-240.02 to 72-240.05, and 72-242, as it shall deem necessary to protect the interests of the state. The board shall adopt and enforce a soil conservation program. Failure of the lessee to utilize the land for the purpose for which the land was leased or to observe and carry

out soil conservation requirements as provided in the rules and regulations of the board shall be cause for cancellation of the lease.

Source: Laws 1899, c. 69, § 15, p. 306; R.S.1913, § 5861; C.S.1922, § 5197; C.S.1929, § 72-217; Laws 1935, c. 163, § 10, p. 602; C.S.Supp.,1941, § 72-217; Laws 1943, c. 159, § 1(1), p. 570; R.S.1943, § 72-232; Laws 1947, c. 235, § 3, p. 744; Laws 1961, c. 349, § 1, p. 1108; Laws 1965, c. 438, § 1, p. 1391; Laws 1974, LB 894, § 1; Laws 1993, LB 121, § 457; Laws 1999, LB 779, § 23; Laws 2021, LB528, § 13.

72-233 School lands; application for lease; manner of leasing; bidding; conditions of lease.

Applications to lease any school lands shall be made to the Board of Educational Lands and Funds. Each such application shall contain an affidavit that the applicant desires to lease and operate such land for the applicant's own use and benefit and that the applicant will not sublease or otherwise dispose of the same without the written approval of the board and will commit no waste or damage on the land nor permit others to do so. The Board of Educational Lands and Funds may, at least once in each year, designate a day and hour for offering, in a public manner in the respective counties, lease contracts on all the educational lands in each respective county which may be subject to lease at the time of such offering. The offering shall be announced in a public manner by publishing a notice thereof three weeks preceding the auction in one or more of the legal newspapers published or of general circulation in the county in which the unleased land is located. If the board is unable to have a representative attend the offering, the county treasurer may, upon the direction of the board, act for it. Adjournments may be taken from day to day until all of the lands have been offered. No lease shall be sublet or assigned without the written approval of the board.

Source: Laws 1899, c. 69, § 15, p. 306; R.S.1913, § 5861; C.S.1922, § 5197; C.S.1929, § 72-217; Laws 1935, c. 163, § 10, p. 602; C.S.Supp.,1941, § 72-217; Laws 1943, c. 159, § 1(2), p. 571; R.S.1943, § 72-233; Laws 1947, c. 235, § 4, p. 745; Laws 1963, c. 416, § 1, p. 1337; Laws 1967, c. 466, § 7, p. 1447; Laws 1993, LB 121, § 458; Laws 1999, LB 779, § 24; Laws 2021, LB528, § 14.

72-234 School lands; lease; terms; period of lease.

The board shall, if the foregoing proceedings appear to be regular, issue to the applicant a lease on the land. Each lease shall contain a covenant or provision (1) that the Board of Educational Lands and Funds may, whenever such board deems it to be for the best interest of the state, adjust the rental of such lands; (2) that the lessee will not sublease or otherwise dispose of such lands without the written consent of the board and will commit no waste or damage on the land nor permit others to do so; (3) that the lessee will observe and carry out soil conservation requirements according to the rules and regulations of the board; (4) that the lessee will pay for the use of such lands the fair market rental as determined by the board; (5) that, upon a failure to pay any rental for a period of sixty days from the time the payment becomes due or upon failure to perform any of the covenants of the lease, the lease may be

forfeited and fully set aside, as provided for in sections 72-235 to 72-239; (6) that the lessee will promptly pay the rental semiannually in advance; (7) that in the event the lessee shall fail to pay rental in advance by the due date, interest shall be assessed at an annual interest rate of nine percent until such time as the rent is paid; and (8) that the premises will be surrendered at the expiration of the lease, unless renewed, or upon violation of any of the terms of the lease. Leases shall be for periods of five to twelve years less the period intervening between the date of the execution of the lease and December 31 of the previous year. The board may offer a lease for a period of less than five years if a lease failed to generate interest at an auction and if the board agrees that reducing the minimum lease term will attract a bid or bids for such a lease. When two or more contiguous tracts are under separate lease with different expiration dates, the board may, if it is deemed to be in the best interest of the state, offer leases for less than twelve years on tracts having the earlier lease expiration date, to coincide with the last expiring lease, in order that all contiguous lands eventually may be offered under one lease.

Source: Laws 1899, c. 69, § 15, p. 306; R.S.1913, § 5861; C.S.1922, § 5197; C.S.1929, § 72-217; Laws 1935, c. 163, § 10, p. 602; C.S.Supp.,1941, § 72-217; Laws 1943, c. 159, § 1(2), p. 572; R.S.1943, § 72-234; Laws 1947, c. 235, § 5, p. 746; Laws 1949, c. 212, § 6, p. 604; Laws 1965, c. 438, § 2, p. 1392; Laws 1967, c. 466, § 9, p. 1449; Laws 1974, LB 894, § 2; Laws 1999, LB 779, § 25; Laws 2021, LB528, § 15.

72-234.01 Repealed. Laws 2021, LB528, § 74.

72-235 School lands; lease; default; notice; forfeiture.

If any lessee of educational lands fails to perform any of the covenants of the lease or is in default of semiannual rental due the state for a period of sixty days, the Board of Educational Lands and Funds may forfeit the lease of such person. If the lessee is in default in the payment of rental, the board may cause notice to be given such delinquent lessee in accordance with section 72-236 that, if such delinquency is not paid within thirty days from the date of service of such notice by either registered or certified mail or the date of the first publication of such notice, his or her lease will be declared forfeited. If the amounts due are not paid within such time, the board may declare the lease forfeited and the land described therein shall revert to the state. Before a forfeiture of a lease shall be declared for a failure to perform the covenants of the lease other than the payment of rentals, the board shall give notice of such proposed forfeiture to such lessee, or to his or her personal representative or next of kin if he or she is dead, by either registered or certified mail, setting forth a time such a lessee, or his or her personal representative or next of kin, may show cause and have a hearing as to whether or not such lease shall be forfeited. The order of forfeiture shall be entered upon the records of the board. The board is required to serve such notice of delinquency and proceed with the forfeiture, as stated in such notice, at least once in each year. The provisions of this section and sections 72-236 to 72-239 shall apply to all lands heretofore or hereinafter leased as educational lands of this state.

Source: Laws 1899, c. 69, § 17, p. 309; Laws 1903, c. 100, § 1, p. 571; R.S.1913, § 5863; C.S.1922, § 5199; Laws 1927, c. 192, § 1, p. 548; C.S.1929, § 72-219; Laws 1935, c. 163, § 12, p. 605;

C.S.Supp.,1941, § 72-219; R.S.1943, § 72-235; Laws 1947, c. 235, § 6, p. 747; Laws 1957, c. 242, § 54, p. 863; Laws 1961, c. 351, § 2, p. 1110; Laws 1999, LB 779, § 26; Laws 2021, LB528, § 16.

ARTICLE 7

STATE CAPITAL AND CAPITOL BUILDING

Section
72-729.01. Hall of Fame Trust Fund; created; use; investment.

72-729.01 Hall of Fame Trust Fund; created; use; investment.

There is hereby created the Hall of Fame Trust Fund to be administered by the Nebraska Hall of Fame Commission for the purpose of the creation, design, size, configuration, and placement of busts or other appropriate objects as authorized in section 72-729. Deposits to such fund shall include money received from public donation and from funds appropriated specifically for such purpose by the Legislature. It is the intent of the Legislature that ten thousand dollars be transferred from the General Fund to the Hall of Fame Trust Fund annually beginning with fiscal year 2021-22. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1973, LB 282, § 1; Laws 1998, LB 1129, § 8; Laws 2021, LB384, § 13.

Cross References

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

ARTICLE 8

PUBLIC BUILDINGS

Section
72-804. New state building; code requirements.
72-805. Buildings constructed with state funds; code requirements.
72-806. Enforcement.

72-804 New state building; code requirements.

(1) Any new state building shall meet or exceed the requirements of the 2018 International Energy Conservation Code published by the International Code Council.

(2) Any new lighting, heating, cooling, ventilating, or water heating equipment or controls in a state-owned building and any new building envelope components installed in a state-owned building shall meet or exceed the requirements of the 2018 International Energy Conservation Code.

(3) The State Building Administrator of the Department of Administrative Services, in consultation with the Department of Environment and Energy, may specify:

(a) A more recent edition of the International Energy Conservation Code;

(b) Additional energy efficiency or renewable energy requirements for buildings; and

(c) Waivers of specific requirements which are demonstrated through life-cycle cost analysis to not be in the state's best interest. The agency receiving the funding shall be required to provide a life-cycle cost analysis to the State Building Administrator.

Source: Laws 1999, LB 755, § 1; Laws 2003, LB 643, § 3; Laws 2004, LB 888, § 1; Laws 2011, LB329, § 1; Laws 2019, LB302, § 92; Laws 2019, LB405, § 3.

72-805 Buildings constructed with state funds; code requirements.

The 2018 International Energy Conservation Code, published by the International Code Council, applies to all new buildings constructed in whole or in part with state funds after July 1, 2020. The Department of Environment and Energy shall review building plans and specifications necessary to determine whether a building will meet the requirements of this section. The department shall provide a copy of its review to the agency receiving funding. The agency receiving the funding shall verify that the building as constructed meets or exceeds the code. The verification shall be provided to the department. The Director of Environment and Energy may, in consultation with the State Building Administrator of the Department of Administrative Services, adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1999, LB 755, § 2; Laws 2004, LB 888, § 2; Laws 2011, LB329, § 2; Laws 2019, LB302, § 93; Laws 2019, LB405, § 4.

72-806 Enforcement.

The enforcement provisions of Chapter 1 of the 2018 International Energy Conservation Code, published by the International Code Council, shall not apply to buildings subject to section 72-804.

Source: Laws 1999, LB 755, § 3; Laws 2003, LB 643, § 4; Laws 2004, LB 888, § 3; Laws 2011, LB329, § 3; Laws 2019, LB405, § 5.

ARTICLE 10

BUILDING FUNDS

Section
72-1005. Repealed. Laws 2021, LB509, § 25.

72-1005 Repealed. Laws 2021, LB509, § 25.

ARTICLE 12

INVESTMENT OF STATE FUNDS

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

Section
72-1237. Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.
72-1239. Nebraska Investment Council; purpose; members; meetings; compensation; expenses.
72-1239.01. Council; duties and responsibilities.
72-1243. State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.
72-1249.02. State Investment Officer's Cash Fund; created; allocation of charges to funds managed; costs; how paid.

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

72-1237 Nebraska Investment Council; created; members; appointment; term; vacancy; immunity.

(1)(a) The Nebraska Investment Council is created. For purposes of the Nebraska State Funds Investment Act, council means the Nebraska Investment Council. The council shall consist of five members, appointed by the Governor with the approval of the Legislature. The State Treasurer, the director of the Nebraska Public Employees Retirement Systems, and except as provided in subdivision (1)(b) of this section, beginning January 1, 2017, the administrator of each retirement system provided for under the Class V School Employees Retirement Act shall serve as nonvoting, ex officio members. One of the appointed members shall be designated chairperson by the Governor.

(b) Beginning September 1, 2024, the director of the Nebraska Public Employees Retirement Systems shall also represent each retirement system provided for under the Class V School Employees Retirement Act.

(2) Each of the appointed members of the council shall serve for a term of five years that begins on January 1 and may be removed by the Governor for cause after notice and an opportunity to be heard. A member may serve until his or her successor's appointment is effective. A member may be reappointed. A successor shall be appointed in the same manner as provided for the members first appointed, and in case of a vacancy caused by death, resignation, or otherwise, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

(3) No member of the council shall be personally liable, except in cases of willful dishonesty, gross negligence, or intentional violation of law, for actions relating to his or her duties as a member of the council.

Source: Laws 1969, c. 584, § 1, p. 2350; Laws 1991, LB 368, § 1; Laws 1991, LB 549, § 20; Laws 1996, LB 847, § 18; Laws 2002, LB 407, § 17; Laws 2006, LB 1019, § 7; Laws 2016, LB447, § 2; Laws 2021, LB147, § 1.

Cross References

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

72-1239 Nebraska Investment Council; purpose; members; meetings; compensation; expenses.

The purpose of the council is to formulate and establish such policies as it may deem necessary and proper which shall govern the methods, practices, and procedures followed by the state investment officer for the investment or reinvestment of state funds and funds described in section 83-133 and the purchase, sale, or exchange of securities as provided by the Nebraska State Funds Investment Act. The council shall meet from time to time as directed by the Governor or the chairperson or as requested by the state investment officer.

The members of the council, except the State Treasurer, the director of the Nebraska Public Employees Retirement Systems, and beginning January 1, 2017, each administrator of a retirement system provided for under the Class V School Employees Retirement Act, shall be paid seventy-five dollars per diem. The members shall be reimbursed for expenses incurred in connection with the performance of their duties as members as provided in sections 81-1174 to 81-1177.

Source: Laws 1969, c. 584, § 3, p. 2350; Laws 1981, LB 204, § 145; Laws 1985, LB 335, § 1; Laws 1991, LB 368, § 2; Laws 1996, LB 847, § 20; Laws 1997, LB 4, § 1; Laws 2005, LB 503, § 6; Laws 2016, LB447, § 3; Laws 2020, LB381, § 79.

Cross References

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

72-1239.01 Council; duties and responsibilities.

(1)(a) The appointed members of the council shall have the responsibility for the investment management of the assets of the retirement systems administered by the Public Employees Retirement Board as provided in section 84-1503, the assets of the Nebraska educational savings plan trust created pursuant to sections 85-1801 to 85-1817, the assets of the achieving a better life experience program pursuant to sections 77-1401 to 77-1409, and beginning January 1, 2017, the assets of each retirement system provided for under the Class V School Employees Retirement Act. Except as provided in subsection (4) of this section, the appointed members shall be deemed fiduciaries with respect to the investment of the assets of the retirement systems, of the Nebraska educational savings plan trust, and of the achieving a better life experience program and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of the retirement systems, of the Nebraska educational savings plan trust, and of the achieving a better life experience program solely in the interests of the members and beneficiaries of the retirement systems or the interests of the participants and beneficiaries of the Nebraska educational savings plan trust and the achieving a better life experience program, as the case may be, for the exclusive purposes of providing benefits to members, members' beneficiaries, participants, and participants' beneficiaries and defraying reasonable expenses incurred within the limitations and according to the powers, duties, and purposes prescribed by law.

(2)(a) The appointed members of the council shall have the responsibility for the investment management of the assets of state funds. The appointed members shall be deemed fiduciaries with respect to the investment of the assets of state funds and shall be held to the standard of conduct of a fiduciary specified in subsection (3) of this section. The nonvoting, ex officio members of the council shall not be deemed fiduciaries.

(b) As fiduciaries, the appointed members of the council and the state investment officer shall discharge their duties with respect to the assets of state funds solely in the interests of the citizens of the state within the limitations and according to the powers, duties, and purposes prescribed by law.

(3) The appointed members of the council shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims by diversifying the investments of the assets of the retirement systems, the Nebraska educational savings plan trust, the achieving a better life experience program, and state funds so as to minimize risk of large losses, unless in light of such circumstances it is clearly prudent not to do so. No assets of the retirement systems, the Nebraska educational savings plan trust, or the achieving a better life experience program shall be invested or reinvested if the sole or primary investment objective is for economic development or social purposes or objectives.

(4) Neither the appointed members of the council nor the state investment officer shall be deemed fiduciaries with respect to investments of the assets of a retirement system provided for under the Class V School Employees Retirement Act made by or on behalf of the board of education as defined in section 79-978 or the board of trustees provided for in section 79-980. Neither the council nor any member thereof nor the state investment officer shall be liable for the action or inaction of the board of education or the board of trustees with respect to the investment of the assets of a retirement system provided for under the Class V School Employees Retirement Act, the consequences of any such action or inaction of the board of education or the board of trustees, and any claims, suits, losses, damages, fees, and costs related to such action or inaction or consequences thereof.

Source: Laws 1996, LB 847, § 21; Laws 2002, LB 407, § 18; Laws 2003, LB 574, § 25; Laws 2015, LB591, § 11; Laws 2016, LB447, § 4; Laws 2019, LB610, § 6.

Cross References

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

72-1243 State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.

(1) Except as otherwise specifically provided by law, the state investment officer shall direct the investment and reinvestment of money in all state funds not currently needed and all funds described in section 83-133 and order the purchase, sale, or exchange of securities for such funds. He or she shall notify the State Treasurer of any payment, receipt, or delivery that may be required as a result of any investment decision, which notification shall be the authorization and direction for the State Treasurer to make such disbursement, receipt, or delivery from the appropriate fund.

(2) The council shall have an analysis made of the investment returns that have been achieved on the assets of each retirement system administered by the Public Employees Retirement Board as provided in section 84-1503 and on the assets of each retirement system provided for under the Class V School Employees Retirement Act. By March 31 of each year, the analysis shall be presented to the board and the Nebraska Retirement Systems Committee of the Legislature. The analysis shall be prepared by an independent organization which has demonstrated expertise to perform this type of analysis and for which there exists no conflict of interest in the analysis being provided. The

analysis may be waived by the council for any retirement system with assets of less than one million dollars.

(3) By April 10 of each year, the council shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee of the Legislature at a public hearing. The plan shall include, but not be limited to, the council's investment portfolios, investment strategies, the duties and limitations of the state investment officer, and an organizational structure of the council's office.

Source: Laws 1969, c. 584, § 7, p. 2351; Laws 1971, LB 53, § 7; Laws 1985, LB 335, § 2; Laws 1991, LB 549, § 21; Laws 1996, LB 847, § 24; Laws 2005, LB 503, § 7; Laws 2011, LB509, § 14; Laws 2016, LB447, § 5; Laws 2019, LB33, § 1; Laws 2022, LB700, § 4.
Effective date March 4, 2022.

Cross References

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

72-1249.02 State Investment Officer's Cash Fund; created; allocation of charges to funds managed; costs; how paid.

The State Investment Officer's Cash Fund is created. A pro rata share of the budget appropriated for the council shall be charged to the income of each fund managed, and such charges shall be transferred to the State Investment Officer's Cash Fund. The allocation of charges may be made by any method determined to be reasonably related to actual costs incurred by the council. Approval of the agencies and boards administering these funds shall not be required.

It is the intent of this section to have funds managed by the state investment officer pay a pro rata share of the investment management expense when this is not prohibited by statute or the constitution.

Management, custodial, and service costs which are a direct expense of state funds may be paid from the income of such funds when this is not prohibited by statute or the Constitution of Nebraska. For purposes of this section, management, custodial, and service costs shall include, but not be limited to, investment counsel fees for managing assets, real estate mortgage loan service fees, real estate management fees, and custody fees for fund securities. All such fees shall be approved by the council and the state investment officer.

Beginning on March 31, 2016, a pro rata share of the budget appropriated for the council shall be charged to the income of the Class V School Employees Retirement Fund, and such charges shall be transferred to the State Investment Officer's Cash Fund. The allocation of charges among a retirement system provided for under the Class V School Employees Retirement Act and the other funds managed by the council may be made by any method determined to be reasonably related to actual costs incurred by the council. Approval of the board of education, the board of trustees, or the retirement board, as defined in section 79-978 and as provided for in section 79-980, shall not be required.

Source: Laws 1983, LB 468, § 1; Laws 1987, LB 31, § 2; Laws 1987, LB 786, § 1; Laws 2002, LB 407, § 20; Laws 2016, LB447, § 7; Laws 2021, LB147, § 2.

Cross References

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

72-1250.01 Cash funds deposited with fiscal agent; constitute investment made by state investment officer.

Whenever cash funds belonging to the State of Nebraska shall be deposited with any fiscal agent authorized by section 72-1250, the holding thereof shall be and constitute an investment made pursuant to direction of the state investment officer for purposes of subdivision (7) of section 84-602.

Source: Laws 1974, LB 925, § 2; Laws 2021, LB509, § 8.

Cross References

State Treasurer, duties, see section 84-602.

(d) REVIEW OF NEBRASKA INVESTMENT COUNCIL

72-1277 Legislative findings.

The Legislature finds that:

(1) The Nebraska Investment Council was created by the Legislature in Laws 1967, LB 335. Additional legislation was passed in Laws 1969, LB 1345, which provided for centralization of the investment of state funds and addressed types of authorized investments and since then the statutory framework of the council has been modified periodically by the Legislature;

(2) The laws of Nebraska provide that the appointed members of the council and the state investment officer are deemed fiduciaries with respect to investment of the assets (a) in the retirement systems, the achieving a better life experience program pursuant to sections 77-1401 to 77-1409, and the Nebraska educational savings plan trust and as fiduciaries are required to discharge their duties with respect to such assets solely in the best interest of the members and beneficiaries of such plans and (b) of other state funds solely in the best interest of the residents of Nebraska;

(3) As fiduciaries, the appointed members of the council and the officer must act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character with like aims by diversifying the investments of assets in the various plans so as to minimize the risk of large losses;

(4) The council managed over fifteen billion three hundred million dollars of assets as of September 30, 2007. Those assets have quadrupled since 1995. The assets managed by the council produced almost one billion five hundred million dollars in investment earnings in 2006 and almost seven billion dollars of investment earnings since December 31, 1995;

(5) The council has the responsibility of the management of portfolios for over thirty state entities. The financial markets and investment strategies that must be employed to achieve satisfactory returns have become more complex and the best practices of similar state government investment agencies have evolved since the creation of the council; and

(6) Pursuant to section 72-1249.02, the operating costs of the council are charged to the income of each fund managed by the council, and such charges are transferred to the State Investment Officer's Cash Fund. Management,

custodial, and service costs that are a direct expense of state funds are paid from the income of such funds.

Source: Laws 2008, LB1147, § 17; Laws 2019, LB33, § 2.

72-1278 Nebraska Investment Council; comprehensive review of council; contract.

The Nebraska Investment Council shall enter into a contract with a qualified independent organization familiar with similar state investment offices to complete a comprehensive review of the current statutory, regulatory, and organizational situation of the council, review best practices of similar state investment offices, and make recommendations to the council, the Governor, and the Legislature for changes needed to ensure that the council has adequate authority to independently execute its fiduciary responsibilities to the members and beneficiaries of the retirement systems, the achieving a better life experience program pursuant to sections 77-1401 to 77-1409, and the Nebraska educational savings plan trust and the residents of Nebraska with regards to other state funds. The recommendations submitted to the Legislature shall be submitted electronically.

Source: Laws 2008, LB1147, § 18; Laws 2012, LB782, § 131; Laws 2019, LB33, § 3.

ARTICLE 20

NIOBRARA RIVER CORRIDOR

Section
72-2007. Niobrara Council; created; members; terms; meetings; expenses.

72-2007 Niobrara Council; created; members; terms; meetings; expenses.

(1) The Niobrara Council is created. The council membership shall include:

(a) A commissioner from each of the county boards of Brown, Cherry, Keya Paha, and Rock counties chosen by the county board of the respective county;

(b) A representative of the Middle Niobrara Natural Resources District and the Lower Niobrara Natural Resources District chosen by the board of the respective district;

(c) The secretary of the Game and Parks Commission or his or her designee;

(d) The regional director for the National Park Service or his or her designee and the regional director for the United States Fish and Wildlife Service or his or her designee. The members under this subdivision shall be nonvoting members unless and until the agencies represented by these members formally authorize such members to vote on all matters before the council by notifying the council and the Governor in writing;

(e) An individual from each of Brown, Cherry, Keya Paha, and Rock counties who resides in the Niobrara River drainage area and owns land in the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, from each county submitted by the county board members on the council;

(f) A representative from a recreational business operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council;

(g) A timber industry representative operating within the Niobrara scenic river corridor chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council; and

(h) A representative of a recognized, nonprofit environmental, conservation, or wildlife organization chosen by the Governor from a list of at least three individuals, or fewer if there are not at least three qualified individuals, submitted by the county board members on the council.

The council members shall hold office for three-year terms and until a successor is appointed and qualified. The council members shall serve at the pleasure of the appointing board or the Governor.

(2) The council shall elect a chairperson, a vice-chairperson, a secretary, and a treasurer who shall jointly serve as the executive committee for the council. The council shall meet on a regular basis with a minimum of six meetings per year. Special meetings may be called by any member of the executive committee or at the request of a simple majority of the members of the council.

(3) A quorum shall be present at a meeting before any action may be taken by the council. A quorum shall be a majority of the members who are selected and serving and who vote on issues before the council. All actions of the council require a majority vote of the quorum present at any meeting, except that any vote to reject or adopt any zoning regulation or variance under section 72-2010 requires a vote of two-thirds of all the council members who are selected and serving and who vote on issues before the council.

(4) Members shall be reimbursed for expenses incurred in carrying out their duties on the council as provided in sections 81-1174 to 81-1177.

Source: Laws 2000, LB 1234, § 3; Laws 2001, LB 182, § 1; Laws 2015, LB310, § 1; Laws 2016, LB1038, § 15; Laws 2020, LB381, § 80; Laws 2020, LB858, § 18.

ARTICLE 21
GOVERNOR'S RESIDENCE

Section
72-2103. Commission members; expenses.

72-2103 Commission members; expenses.

The members of the Governor's Residence Advisory Commission shall serve without compensation. The members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1998, LB 1129, § 30; Laws 2020, LB381, § 81.

ARTICLE 22
NEBRASKA STATE CAPITOL PRESERVATION AND RESTORATION ACT

Section
72-2201. Act, how cited.
72-2215. Flags of Indian tribes; display in State Capitol; powers and duties.

72-2201 Act, how cited.

Sections 72-2201 to 72-2215 shall be known and may be cited as the Nebraska State Capitol Preservation and Restoration Act.

Source: Laws 2004, LB 439, § 1; Laws 2005, LB 684, § 1; Laws 2020, LB848, § 10.

72-2215 Flags of Indian tribes; display in State Capitol; powers and duties.

(1)(a) The Clerk of the Legislature shall cause to be displayed within the Warner Legislative Chamber flags representing the four federally recognized tribes with headquarters in Nebraska: the Omaha Tribe of Nebraska, the Ponca Tribe of Nebraska, the Santee Sioux Nation, and the Winnebago Tribe of Nebraska.

(b) The Commission on Indian Affairs shall obtain such flags, as well as poles and bases, through donations from the tribes. The Commission on Indian Affairs shall be responsible for replacing such flags, poles, and bases.

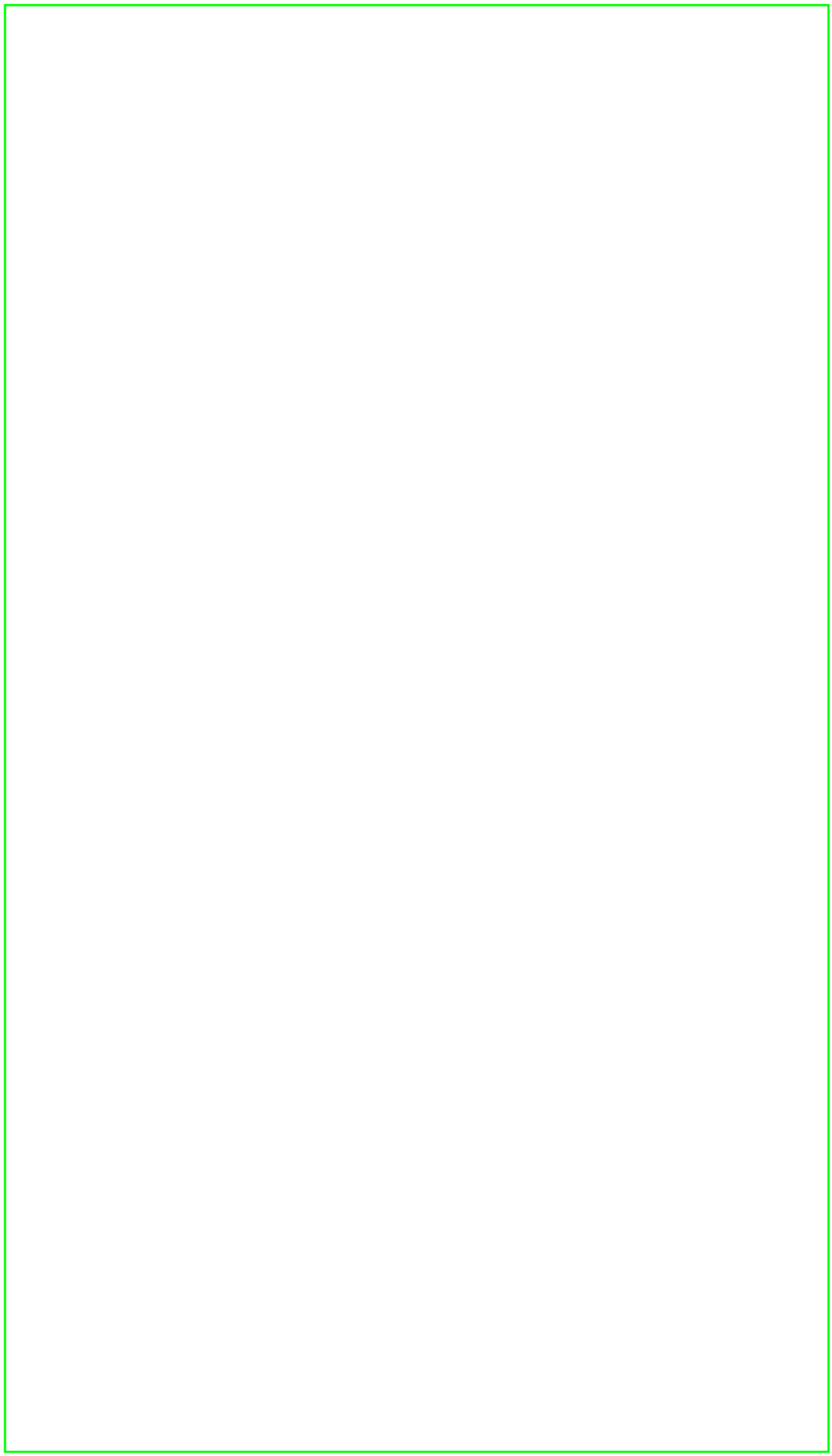
(c) The Clerk of the Legislature shall approve placement locations within the Warner Legislative Chamber. The size, proportion, and placement of such flags shall be similar to that of the flag of the United States and the flag of the State of Nebraska.

(2)(a) The State Capitol Administrator shall cause to be displayed in the Memorial Chamber on the fourteenth floor of the State Capitol the flags of any Indian tribes with historic and regional connections to Nebraska.

(b) The Commission on Indian Affairs shall designate the tribes with historic and regional connections to Nebraska and the flags to be displayed under subdivision (2)(a) of this section. The Commission on Indian Affairs shall obtain such flags, as well as poles and bases, through donations from the tribes. The Commission on Indian Affairs shall be responsible for replacing such flags, poles, and bases.

(c) The Nebraska Capitol Commission shall approve placement locations in the Memorial Chamber.

Source: Laws 2020, LB848, § 11.



CHAPTER 73
PUBLIC LETTINGS AND CONTRACTS

Article.
7. State Procurement Practices. 73-701.

ARTICLE 7
STATE PROCUREMENT PRACTICES

Section
73-701. Department of Administrative Services; procurement practices; evaluation; report.

73-701 Department of Administrative Services; procurement practices; evaluation; report.

(1) The Department of Administrative Services shall contract for the completion of an evaluation of the state's procurement practices. The evaluation shall analyze past procurement challenges and address potential areas for improvement, including, but not limited to: (a) Due diligence, (b) evaluation of cost, (c) accountability for decisionmaking, and (d) protest procedures.

(2) The department shall contract with an outside consultant with expertise in government procurement within sixty days after April 19, 2022, for the purpose of conducting such evaluation. Such contract shall not be subject to any competitive bidding requirement.

(3) The evaluation shall be collaborative and shall include involvement by members of the Legislature and members of the executive departments described in this subsection. The evaluation shall be completed with input from:

(a) The chairpersons of the Executive Board of the Legislative Council, the Government, Military and Veterans Affairs Committee of the Legislature, and the Health and Human Services Committee of the Legislature or the designees of such chairpersons;

(b) Other members of the Legislature as such chairpersons deem appropriate;

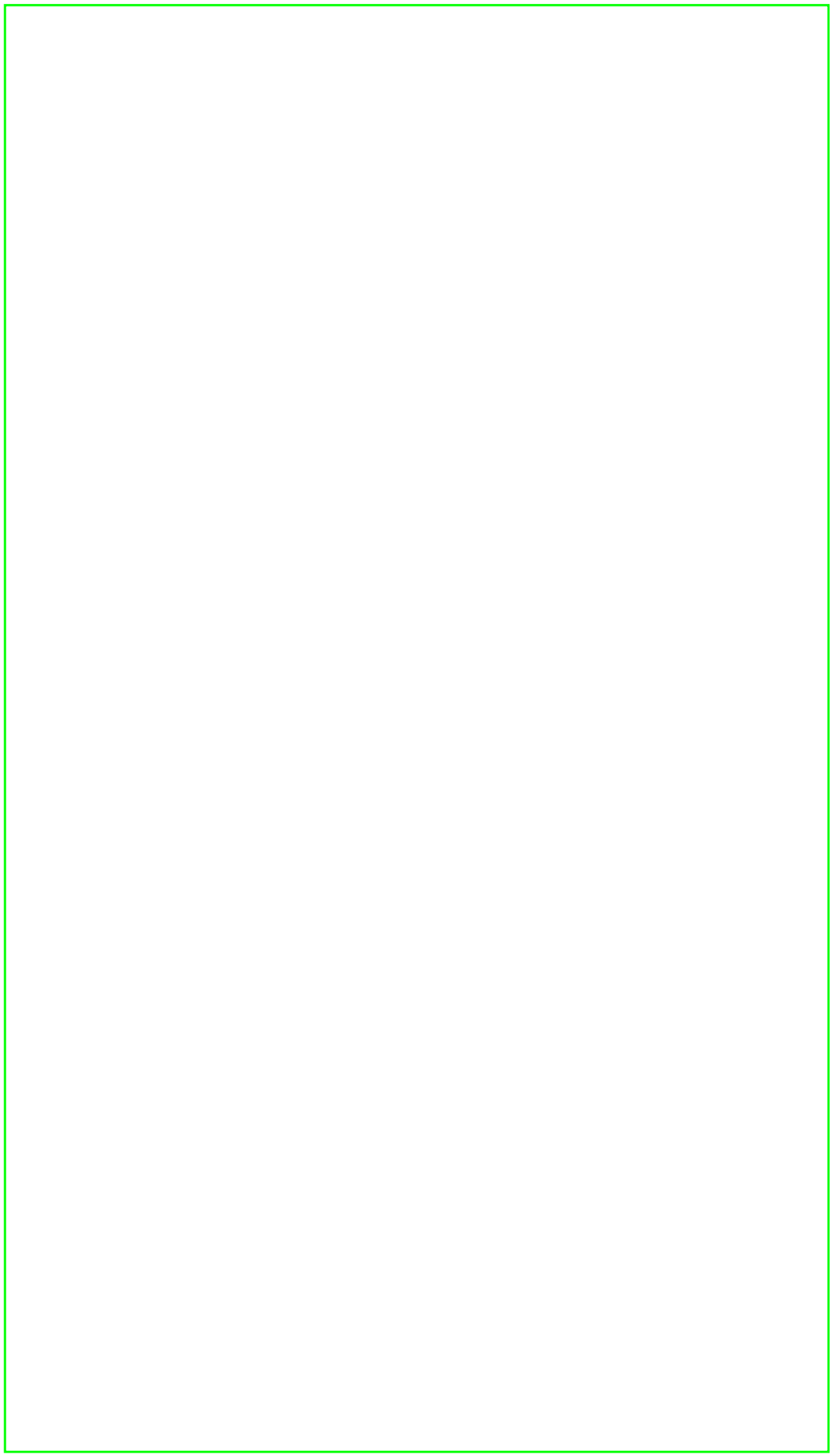
(c) The Department of Administrative Services;

(d) The Department of Health and Human Services; and

(e) Any other using agencies, as defined in section 81-145, deemed appropriate to participate by the Department of Administrative Services.

(4) The Department of Administrative Services shall electronically submit a report with the results of the evaluation to the Legislature and the Governor on or before November 15, 2022. Such report shall include recommendations for improvements to the state's procurement policies and practices.

Source: Laws 2022, LB1037, § 1.
Operative date April 19, 2022.



CHAPTER 75
PUBLIC SERVICE COMMISSION

Article.
1. Organization and Composition, Regulatory Scope, and Procedure. 75-101.01 to 75-161.
3. Motor Carriers.
   (a) Intrastate Motor Carriers. 75-301 to 75-311.
   (e) Safety Regulations. 75-362 to 75-369.03.
   (j) Division of Motor Carrier Services. 75-386.
   (l) Unified Carrier Registration Plan and Agreement. 75-392 to 75-3,100.
11. 211 Information and Referral Network. 75-1101.

ARTICLE 1

ORGANIZATION AND COMPOSITION, REGULATORY SCOPE, AND PROCEDURE

Section
75-101.01. Public Service Commission; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
75-101.02. Public Service Commission; districts; population figures and maps; basis.
75-104. Commissioners; salary; commissioners and employees; expenses; when allowed.
75-109.01. Jurisdiction.
75-118. Commission; duties.
75-124. Rates; publication.
75-126. Unjust discrimination and practices prohibited; exceptions.
75-156. Civil penalty; procedure; order; appeal.
75-161. Special party buses; buses providing charter services; distinguishing signs or other indicia.

75-101.01 Public Service Commission; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2020 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into five public service commissioner districts, and each public service commissioner district shall be entitled to one member.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps PSC21-39001, PSC21-39001-1, PSC21-39001-2, PSC21-39001-3, PSC21-39001-4, and PSC21-39001-5, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2021, LB5, One Hundred Seventh Legislature, First Special Session.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on October 1, 2021.

(b) When questions of interpretation of district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her website the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

Source: Laws 1963, c. 174, § 1, p. 596; Laws 1971, LB 955, § 1; Laws 1981, LB 551, § 1; R.S.1943, (1987), § 5-107; Laws 1991, LB 618, § 1; Laws 2001, LB 855, § 2; Laws 2011, LB700, § 1; Laws 2021, First Spec. Sess., LB5, § 1.

75-101.02 Public Service Commission; districts; population figures and maps; basis.

For purposes of section 75-101.01, the Legislature adopts the official population figures and maps from the 2020 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1971, LB 955, § 2; Laws 1981, LB 551, § 2; R.S.1943, (1987), § 5-107.01; Laws 1991, LB 618, § 2; Laws 2001, LB 855, § 3; Laws 2011, LB700, § 2; Laws 2021, First Spec. Sess., LB5, § 2.

75-104 Commissioners; salary; commissioners and employees; expenses; when allowed.

(1) Until January 4, 2007, the annual salary of each commissioner shall be fifty thousand dollars. Commencing January 4, 2007, the annual salary of each commissioner shall be seventy-five thousand dollars.

(2) Each commissioner shall be entitled to receive from the state his or her mileage expenses incurred while traveling in the line of duty to and from his or her residence to the office of the Public Service Commission in Lincoln pursuant to the following conditions:

(a) The Public Service Commission has adopted and promulgated rules and regulations establishing guidelines for allowable reimbursement of such mileage expenses, except that such mileage rate shall not exceed the mileage rate established by the Department of Administrative Services pursuant to section 81-1176;

(b) The request for such reimbursement falls within such guidelines; and

(c) The total amounts authorized for such reimbursement of mileage expenses in any fiscal year does not cause the total expenses to exceed the total funds appropriated to the program established for commissioners' expenses. In addition thereto, the commissioners, executive director, clerks, and other employees of the commission shall be reimbursed for expenses, including the cost of transportation while traveling on the business of the commission, to be paid in the same manner as other requests for payment or reimbursement from the state. In computing the cost of transportation for the commissioners, executive director, clerks, and other employees, no mileage or other traveling expense

shall be requested or allowed unless sections 81-1174 to 81-1177 are strictly complied with.

Source: Laws 1963, c. 425, art. I, § 4, p. 1355; Laws 1967, c. 477, § 1, p. 1473; Laws 1969, c. 603, § 1, p. 2464; Laws 1972, LB 1389, § 1; Laws 1975, LB 311, § 1; Laws 1980, LB 872, § 1; Laws 1984, LB 826, § 2; Laws 1986, LB 43, § 3; Laws 1988, LB 864, § 11; Laws 1990, LB 503, § 1; Laws 1994, LB 414, § 27; Laws 1994, LB 872, § 16; Laws 1995, LB 16, § 1; Laws 2000, LB 956, § 1; Laws 2006, LB 817, § 1; Laws 2020, LB381, § 82.

75-109.01 Jurisdiction.

Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

(1) Common carriers, generally, pursuant to sections 75-101 to 75-158;

(2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;

(3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

(4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;

(5) Motor carrier registration, licensure, and safety pursuant to sections 75-301 to 75-343, 75-369.03, 75-370, and 75-371;

(6) Pipeline carriers and rights-of-way pursuant to the Major Oil Pipeline Siting Act, the State Natural Gas Regulation Act, and sections 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with the provisions of the Major Oil Pipeline Siting Act, the provisions of the Major Oil Pipeline Siting Act control;

(7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;

(8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-579, 86-1307, and 86-1308;

(9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724;

(10) Water service pursuant to the Water Service Regulation Act; and

(11) Jurisdictional utilities governed by the State Natural Gas Regulation Act. If the provisions of Chapter 75 are inconsistent with the provisions of the State Natural Gas Regulation Act, the provisions of the State Natural Gas Regulation Act control.

Source: Laws 2002, LB 1105, § 482; Laws 2003, LB 790, § 63; Laws 2006, LB 1069, § 1; Laws 2006, LB 1249, § 12; Laws 2011, First Spec. Sess., LB1, § 14; Laws 2015, LB629, § 1; Laws 2015,

LB461, § 1; Laws 2020, LB461, § 1; Laws 2020, LB992, § 10; Laws 2022, LB1144, § 1.
Operative date April 20, 2022.

Cross References

Automatic Dialing-Announcing Devices Act, see section 86-236.
Emergency Telephone Communications Systems Act, see section 86-420.
Enhanced Wireless 911 Services Act, see section 86-442.
Grain Dealer Act, see section 75-901.
Grain Warehouse Act, see section 88-525.
Intrastate Pay-Per-Call Regulation Act, see section 86-258.
Major Oil Pipeline Siting Act, see section 57-1401.
Nebraska Telecommunications Regulation Act, see section 86-101.
Nebraska Telecommunications Universal Service Fund Act, see section 86-316.
Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
State Natural Gas Regulation Act, see section 66-1801.
Telecommunications Relay System Act, see section 86-301.
Telephone Consumer Slamming Prevention Act, see section 86-201.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.
Water Service Regulation Act, see section 75-1001.

75-118 Commission; duties.

The commission shall:

(1) Until July 1, 2021, fix all necessary rates, charges, and regulations governing and regulating the transportation, storage, or handling of household goods by any common carrier in Nebraska intrastate commerce;

(2) Fix all necessary rates, charges, and regulations governing and regulating the transportation of passengers by any common carrier in Nebraska intrastate commerce;

(3) Until July 1, 2021, make all necessary classifications of household goods that may be transported, stored, or handled by any common carrier in Nebraska intrastate commerce, such classifications applying to and being the same for all common carriers;

(4) Authorize the transportation of (a) household goods under a license issued pursuant to section 75-304.03 or (b) employees of a railroad carrier under a license issued pursuant to section 75-304.04;

(5) Prevent and correct the unjust discriminations set forth in section 75-126;

(6) Enforce all statutes and commission regulations pertaining to rates and, if necessary, institute actions in the appropriate court of any county in which the common carrier involved operates except actions instituted pursuant to sections 75-140 and 75-156 to 75-158. All suits shall be brought and penalties recovered in the name of the state by or under the direction of the Attorney General; and

(7) Enforce the Major Oil Pipeline Siting Act and the State Natural Gas Regulation Act.

Source: Laws 1963, c. 425, art. I, § 18, p. 1360; Laws 1989, LB 78, § 8; Laws 1994, LB 414, § 36; Laws 1995, LB 424, § 10; Laws 2003, LB 790, § 66; Laws 2011, First Spec. Sess., LB1, § 17; Laws 2020, LB461, § 2.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.
State Natural Gas Regulation Act, see section 66-1801.

75-124 Rates; publication.

The commission may compile and reproduce tariffs containing the schedules of rates and charges for transportation of persons and, until July 1, 2021, household goods. The commission may make a charge for copies of such tariffs to cover the cost of reproducing, supplementing, and mailing the same. Every common carrier shall reproduce, keep for public inspection, and file with the commission in the manner prescribed by the commission, schedules showing the rates, fares, and charges for the transportation of passengers and, until July 1, 2021, household goods, which have been fixed and established as provided in Chapter 75, articles 1 and 3, and which are in force at the time with respect to such common carrier.

Source: Laws 1963, c. 425, art. I, § 24, p. 1363; Laws 1995, LB 424, § 11; Laws 2020, LB461, § 3.

75-126 Unjust discrimination and practices prohibited; exceptions.

(1) Except as otherwise provided in this section, no common carrier shall:

(a) Charge, demand, collect, or receive from any person a greater or lesser compensation for any services rendered than it charges, demands, collects, or receives from any other person for doing a like or contemporaneous service unless required under section 86-465;

(b) Make or give any undue or unreasonable preference or advantage to any particular person;

(c) Subject any type of traffic to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatsoever;

(d) Charge or receive any greater compensation in the aggregate for the transportation of a like kind of property or passengers for a shorter than for a longer distance over the same line or route, except as the commission may prescribe in special cases to prevent manifest injuries, except that no manifest injustice shall be imposed upon any person at intermediate points. This section shall not prevent the commission from making group or emergency rates;

(e) Demand, charge, or collect, by any device whatsoever, a lesser or greater compensation for any service rendered than that filed with or prescribed by the commission; or

(f) Change any rate, schedule, or classification in any manner whatsoever before application has been made to the commission and permission granted for that purpose, except as otherwise provided in section 86-155.

(2) This section shall not prohibit any common carrier from, and a common carrier shall not be subject to any fine, penalty, or forfeiture for, performing services free or at reduced rates to:

(a) The United States, the State of Nebraska, or any governmental subdivision thereof;

(b) The employees, both present and retired, of such common carrier;

(c) Any person when the object is to provide relief in case of any disaster;

(d) Any person who transports property for charitable purposes;

(e) Ministers and others giving their entire time to religious or charitable work;

(f) Any person who is legally blind or visually handicapped; or

(g) Any person who is sixty-five years of age or older.

Source: Laws 1963, c. 425, art. I, § 26, p. 1364; Laws 1967, c. 479, § 7, p. 1477; Laws 1982, LB 633, § 1; Laws 1994, LB 414, § 41; Laws 1995, LB 424, § 12; Laws 1998, LB 1056, § 7; Laws 2002, LB 1105, § 486; Laws 2008, LB755, § 2; Laws 2022, LB750, § 78. Operative date July 21, 2022.

75-156 Civil penalty; procedure; order; appeal.

(1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, contract carrier, licensee, grain dealer, or grain warehouseman for each violation of (a) any provision of the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, (b) any term, condition, or limitation of any certificate, permit, license, or authority issued by the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, or (c) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01.

(2) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty not less than one hundred dollars and not more than one thousand dollars against any jurisdictional utility for each violation of (a) any provision of the State Natural Gas Regulation Act, (b) any rule, regulation, order, or lawful requirement issued by the commission pursuant to the act, (c) any final judgment or decree made by any court upon appeal from any order of the commission, or (d) any term, condition, or limitation of any certificate issued by the commission issued under authority delegated to the commission pursuant to the act. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(3) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any wireless carrier for each violation of the Enhanced Wireless 911 Services Act or any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the act.

(4) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to one thousand dollars against any person for each violation of the Nebraska Uniform Standards for Modular Housing Units Act or the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or any rule, regulation, or order of the commission issued under the authority delegated to the commission pursuant

to either act. Each such violation shall constitute a separate violation with respect to each modular housing unit, manufactured home, or recreational vehicle, except that the maximum penalty shall not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

(5) The civil penalty assessed under this section shall not exceed two million dollars per year for each violation except as provided in subsection (4) of this section. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(6) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report or pay the fee as required by section 75-116 and as prescribed by commission rules and regulations or for failure to register as required by section 86-125 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section may appeal. The appeal shall be in accordance with section 75-136.

(7) When any person or party is accused of any violation listed in this section, the commission shall notify such person or party in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, the penalty may be collected by civil action in the district court of Lancaster County.

Source: Laws 1995, LB 424, § 18; Laws 1996, LB 1218, § 41; Laws 2000, LB 1285, § 9; Laws 2002, LB 1105, § 493; Laws 2002, LB 1211, § 10; Laws 2003, LB 187, § 22; Laws 2003, LB 735, § 1; Laws 2003, LB 790, § 73; Laws 2005, LB 319, § 3; Laws 2008, LB755, § 3; Laws 2013, LB545, § 8; Laws 2020, LB461, § 4.

Cross References

Enhanced Wireless 911 Services Act, see section 86-442.
Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
State Natural Gas Regulation Act, see section 66-1801.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

75-161 Special party buses; buses providing charter services; distinguishing signs or other indicia.

The Public Service Commission shall, in consultation with the Nebraska Liquor Control Commission, adopt and promulgate rules and regulations for

signs or other indicia distinguishing between buses providing special party services and buses providing charter services.

Source: Laws 2020, LB734, § 11.

ARTICLE 3

MOTOR CARRIERS

(a) INTRASTATE MOTOR CARRIERS

Section
75-301. Motor carriers; regulation; legislative policy.
75-302. Terms, defined.
75-303. Motor carriers; scope of law.
75-304.02. Repealed. Laws 2020, LB461, § 15.
75-304.03. Mover of household goods; license; application; fee; issuance; conditions; renewal; fee; failure to comply; effect; commission; authority.
75-304.04. Transportation of railroad carrier employees; license; application; fee; issuance; conditions; renewal; fee; failure to comply; effect; commission; authority.
75-307. Insurance and bond requirements; subrogation; applicability of section.
75-308. Tariff; publication; unlawful practices.
75-311. Certificates; permits; designation of authority; issuance; review by commission; effect.

(e) SAFETY REGULATIONS

75-362. Federal regulations; terms, defined.
75-363. Federal motor carrier safety regulations; provisions adopted; exceptions.
75-364. Additional federal motor carrier regulations; provisions adopted.
75-366. Enforcement powers.
75-369.03. Violations; civil penalty; referral to federal agency or Public Service Commission; when.

(j) DIVISION OF MOTOR CARRIER SERVICES

75-386. Division of Motor Carrier Services; duties.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-392. Terms, defined.
75-393. Unified carrier registration plan and agreement; director; powers.
75-398. Violations; penalty.
75-399. Sections not applicable to intrastate commerce.
75-3,100. Registration; suspend, revoke, cancel, or refuse to issue or renew; conditions; notice; hearing; petition.

(a) INTRASTATE MOTOR CARRIERS

75-301 Motor carriers; regulation; legislative policy.

(1) It is the policy of the Legislature to comply with the laws of the United States, to promote uniformity of regulation, to prevent motor vehicle accidents, deaths, and injuries, to protect the public safety, to reduce redundant regulation, to promote financial responsibility on the part of all motor carriers operating in and through the state, and to foster the development, coordination, and preservation of a safe, sound, adequate, and productive motor carrier system which is vital to the economy of the state.

(2) It is the policy of the Legislature to (a) regulate transportation by motor carriers of passengers and household goods in intrastate commerce upon the public highways of Nebraska in such manner as to recognize and preserve the inherent advantages of and foster sound economic conditions in such transportation and among such carriers, in the public interest, (b) authorize upon the

public highways of Nebraska the transportation in intrastate commerce of (i) household goods by motor carriers under licenses issued pursuant to section 75-304.03 and (ii) employees of railroad carriers engaged in interstate commerce to or from their work locations under licenses issued pursuant to section 75-304.04, (c) promote adequate economical and efficient service by motor carriers and reasonable charges therefor without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices, (d) improve the relations between and coordinate transportation by and regulation of such motor carriers and other carriers, (e) develop and preserve a highway transportation system properly adapted to the needs of the commerce of Nebraska, (f) cooperate with the several states and the duly authorized officials thereof, and (g) cooperate with the United States Government in the administration and enforcement of the unified carrier registration plan and agreement.

The commission, the Division of Motor Carrier Services, and the carrier enforcement division shall enforce all provisions of section 75-126 and Chapter 75, article 3, so as to promote, encourage, and ensure a safe, dependable, responsive, and adequate transportation system for the public as a whole.

Source: Laws 1963, c. 425, art. III, § 1, p. 1374; Laws 1989, LB 78, § 14; Laws 1995, LB 424, § 21; Laws 1996, LB 1218, § 42; Laws 2009, LB331, § 14; Laws 2020, LB461, § 5.

75-302 Terms, defined.

For purposes of sections 75-301 to 75-343 and in all rules and regulations adopted and promulgated by the commission pursuant to such sections, unless the context otherwise requires:

(1) Attended services means an attendant or caregiver accompanying a minor or a person who has a physical, mental, or developmental disability and is unable to travel or wait without assistance or supervision;

(2) Carrier enforcement division means the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol;

(3) Certificate means a certificate of public convenience and necessity issued under Chapter 75, article 3, to common carriers by motor vehicle;

(4) Civil penalty means any monetary penalty assessed by the commission or carrier enforcement division due to a violation of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3; any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3; or any rule, regulation, or order of the commission, the Division of Motor Carrier Services, or the carrier enforcement division issued pursuant to Chapter 75, article 3;

(5) Commission means the Public Service Commission;

(6) Common carrier means any person who or which undertakes to transport passengers or, until July 1, 2021, household goods, for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state. Beginning July 1, 2021, common carrier does not include a motor carrier operating under a license issued pursuant to section 75-304.03;

(7) Contract carrier means any motor carrier which transports passengers or, until July 1, 2021, household goods, for hire other than as a common carrier designed to meet the distinct needs of each individual customer or a specifically

designated class of customers without any limitation as to the number of customers it can serve within the class. Beginning on January 1, 2021, contract carrier does not include a motor carrier operating under a license issued pursuant to section 75-304.04;

(8) Division of Motor Carrier Services means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(9) Highway means the roads, highways, streets, and ways in this state;

(10) Household goods means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property as the commission may provide by regulation if the transportation of such effects or property, is:

(a) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with the intent to use in his or her dwelling; or

(b) Arranged and paid for by another party;

(11) Intrastate commerce means commerce between any place in this state and any other place in this state and not in part through any other state;

(12) License means a license issued to a motor carrier engaged in the for-hire, intrastate transportation of (a) household goods under section 75-304.03 or (b) employees of a railroad carrier engaged in interstate commerce to or from their work locations under section 75-304.04;

(13) Licensed care transportation services means transportation provided by an entity licensed by the Department of Health and Human Services as a residential child-caring agency as defined in section 71-1926 or child-placing agency as defined in section 71-1926 or a child care facility licensed under the Child Care Licensing Act to a client of the entity or facility when the person providing transportation services also assists and supervises the passenger or, if the client is a minor, to a family member of a minor when it is necessary for agency or facility staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Licensed care transportation services must be incidental to and in furtherance of the social services provided by the entity or facility to the transported client;

(14) Motor carrier means any person other than a regulated motor carrier who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers or property over any public highway in this state;

(15) Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails;

(16) Permit means a permit issued under Chapter 75, article 3, to contract carriers by motor vehicle;

(17) Person means any individual, firm, partnership, limited liability company, corporation, company, association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof;

(18) Private carrier means any motor carrier which owns, controls, manages, operates, or causes to be operated a motor vehicle to transport passengers or property to or from its facility, plant, or place of business or to deliver to

purchasers its products, supplies, or raw materials (a) when such transportation is within the scope of and furthers a primary business of the carrier other than transportation and (b) when not for hire. Nothing in sections 75-301 to 75-322 shall apply to private carriers;

(19) Regulated motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers, other than those excepted under section 75-303, or, until July 1, 2021, household goods, over any public highway in this state. Beginning July 1, 2021, regulated motor carrier does not include a motor carrier operating under a license issued pursuant to section 75-304.03. Beginning on January 1, 2021, regulated motor carrier does not include a motor carrier operating under a license issued pursuant to section 75-304.04;

(20) Residential care means care for a minor or a person who is physically, mentally, or developmentally disabled who resides in a residential home or facility regulated by the Department of Health and Human Services, including, but not limited to, a foster home, treatment facility, residential child-caring agency, or shelter;

(21) Residential care transportation services means transportation services to persons in residential care when such residential care transportation services and residential care are provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department;

(22) Supported transportation services means transportation services to a minor or for a person who is physically, mentally, or developmentally disabled when the person providing transportation services also assists and supervises the passenger or transportation services to a family member of a minor when it is necessary for provider staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Supported transportation services must be provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department, and the driver must meet department requirements for (a) training or experience working with minors or persons who are physically, mentally, or developmentally disabled, (b) training with regard to the specific needs of the client served, (c) reporting to the department, and (d) age. Assisting and supervising the passenger shall not necessarily require the person providing transportation services to stay with the passenger after the transportation services have been provided; and

(23) Transportation network company has the definition found in section 75-323. A transportation network company shall not own, control, operate, or manage drivers' personal vehicles.

Source: Laws 1963, c. 425, art. III, § 2, p. 1375; Laws 1969, c. 606, § 1, p. 2467; Laws 1972, LB 1370, § 1; Laws 1989, LB 78, § 18; Laws 1990, LB 980, § 25; Laws 1993, LB 121, § 464; Laws 1993, LB 412, § 2; Laws 1995, LB 424, § 22; Laws 1996, LB 1218, § 43; Laws 1999, LB 594, § 66; Laws 2006, LB 1069, § 3; Laws 2007, LB358, § 12; Laws 2011, LB112, § 1; Laws 2013, LB265, § 45; Laws 2015, LB629, § 23; Laws 2020, LB461, § 6.

Cross References

Child Care Licensing Act, see section 71-1908.

75-303 Motor carriers; scope of law.

Sections 75-301 to 75-322 shall apply to transportation by a motor carrier or the transportation of passengers and, until July 1, 2021, household goods, by a regulated motor carrier for hire in intrastate commerce except for the following:

(1) A motor carrier for hire in the transportation of school children and teachers to and from school;

(2) A motor carrier for hire operated in connection with a part of a streetcar system;

(3) A motor carrier for hire providing transportation services for passengers in vehicles with a rated seating capacity of eight or more passengers when (a) such services are incidental to agritourism activities as defined in section 82-603, (b) the destination for such agritourism activities is outside any incorporated city or village, and (c) the point of origination and termination is outside a county that includes a city of the metropolitan class or primary class;

(4) An ambulance, ambulance owner, hearse, or automobile used exclusively as an incident to conducting a funeral;

(5) A motor carrier exempt by subdivision (1) of this section which hauls for hire (a) persons of a religious, fraternal, educational, or charitable organization, (b) pupils of a school to athletic events, (c) players of American Legion baseball teams when the point of origin or termination is within five miles of the domicile of the carrier, and (d) the elderly as defined in section 13-1203 and their spouses and dependents under a contract with a municipality or county authorized in section 13-1208;

(6) A motor carrier operated by a city and engaged in the transportation of passengers, and such exempt operations shall be no broader than those authorized in intrastate commerce at the time the city or other political subdivision assumed ownership of the operation;

(7) A motor vehicle owned and operated by a nonprofit organization which is exempt from payment of federal income taxes, as provided by section 501(c)(4), Internal Revenue Code, transporting solely persons over age sixty, persons who are spouses and dependents of persons over age sixty, and handicapped persons;

(8) A motor carrier engaged in the transportation of passengers operated by a transit authority or regional metropolitan transit authority established under and acting pursuant to the laws of the State of Nebraska;

(9) Except as provided in section 75-304.03, a motor carrier engaged in the transportation of household goods;

(10) Except as provided in section 75-304.04, a motor carrier engaged in the transportation of employees of a railroad carrier engaged in interstate commerce to or from their work locations;

(11) A motor carrier operated by a municipality or county, as authorized in section 13-1208, in the transportation of elderly persons;

(12) A motor vehicle having a seating capacity of twenty or less which is operated by a governmental subdivision or a qualified public-purpose organiza-

tion as defined in section 13-1203 engaged in the transportation of passengers in the state;

(13) A motor vehicle owned and operated by a nonprofit entity organized for the purpose of furnishing electric service;

(14) A motor carrier engaged in attended services under contract or subcontract with the Department of Health and Human Services or with any agency organized under the Nebraska Community Aging Services Act;

(15) A motor carrier engaged in residential care transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements;

(16) A motor carrier engaged in supported transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements; and

(17) A motor carrier engaged in licensed care transportation services if the motor carrier files a certificate with the commission that such provider meets the minimum driver standards, insurance requirements, and equipment standards prescribed by the commission. Insurance requirements established by the commission shall be consistent with the insurance requirements established by the Department of Health and Human Services for attended services, residential care transportation services, and supported transportation services.

Source: Laws 1963, c. 425, art. III, § 3, p. 1376; Laws 1969, c. 606, § 2, p. 2468; Laws 1972, LB 1178, § 1; Laws 1973, LB 54, § 1; Laws 1973, LB 70, § 1; Laws 1973, LB 345, § 2; Laws 1974, LB 762, § 1; Laws 1981, LB 85, § 2; Laws 1981, LB 144, § 8; Laws 1983, LB 98, § 1; Laws 1989, LB 78, § 19; Laws 1993, LB 412, § 3; Laws 1993, LB 413, § 3; Laws 1995, LB 424, § 23; Laws 1996, LB 1218, § 44; Laws 1999, LB 594, § 67; Laws 2011, LB112, § 2; Laws 2019, LB492, § 41; Laws 2020, LB461, § 7.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

75-304.02 Repealed. Laws 2020, LB461, § 15.

75-304.03 Mover of household goods; license; application; fee; issuance; conditions; renewal; fee; failure to comply; effect; commission; authority.

(1) Beginning July 1, 2021, any mover of household goods operating in this state and engaged in the intrastate transportation for hire of household goods shall apply to the commission for a license prior to transporting household goods in intrastate commerce. A license shall be issued by the commission to any qualified applicant upon payment of a license fee of two hundred fifty dollars and receipt of a completed application in which the principal place of business of the applicant in the State of Nebraska is identified and the applicant agrees and affirms to perform the service in conformance with applicable sections 75-301 to 75-322 and the rules and regulations of the commission adopted and promulgated under such sections. Otherwise the application shall be denied. Applications for initial and renewal licenses shall be on forms

prescribed by the commission. A license issued under this section shall be valid for one year and may be renewed annually for a fee of two hundred fifty dollars. A license may be suspended or revoked by the commission after notice and hearing for failure to comply with applicable sections 75-101 to 75-801, any rule or regulation adopted and promulgated under such sections, or any lawful order of the commission.

(2) Any person who applies for a license pursuant to this section shall comply with the requirements of section 75-307. The commission shall have no authority to regulate the rates of any motor carrier who is issued a license under this section.

Source: Laws 2020, LB461, § 8.

75-304.04 Transportation of railroad carrier employees; license; application; fee; issuance; conditions; renewal; fee; failure to comply; effect; commission; authority.

(1) Any motor carrier operating in this state engaged in the intrastate transportation for hire of employees of a railroad carrier engaged in interstate commerce to or from their work locations shall apply to the commission for a license prior to transporting such employees in intrastate commerce. A license shall be issued by the commission to any qualified applicant upon payment of a license fee of two hundred fifty dollars and receipt of a completed application in which the principal place of business of the applicant in the State of Nebraska is identified and the applicant agrees and affirms to perform the service in conformance with section 75-307 and the rules and regulations adopted and promulgated by the commission relating to driver qualifications, equipment, operating standards, and record keeping. Otherwise the application shall be denied. Applications for initial and renewal licenses shall be on forms prescribed by the commission. A license issued under this section shall be valid for one year and may be renewed annually for a fee of two hundred fifty dollars. A license may be suspended or revoked by the commission after notice and hearing for failure to comply with section 75-307, and any rule or regulation adopted and promulgated under this section, or any lawful order of the commission.

(2) Any person who applies for a license pursuant to this section shall comply with the requirements of section 75-307. The commission shall have no authority to regulate the rates of any motor carrier who is issued a license under this section.

Source: Laws 2020, LB461, § 9.

75-307 Insurance and bond requirements; subrogation; applicability of section.

(1) Certificated intrastate motor carriers, including common and contract carriers, any motor carrier transporting household goods under a license issued pursuant to section 75-304.03, and any motor carrier transporting employees of a railroad carrier under a license issued pursuant to section 75-304.04 shall comply with reasonable rules and regulations prescribed by the commission governing the filing with the commission, the approval of the filings, and the maintenance of proof at such carrier's principal place of business of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as required by the commission,

conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate, permit, or license or for loss or damage to property of others. No certificate or permit shall be issued to a common or contract carrier, no license shall be issued to a motor carrier transporting household goods under section 75-304.03 or employees of a railroad carrier under section 75-304.04, nor shall such certificate, permit, or license remain in force unless such carrier complies with this section and the rules and regulations prescribed by the commission pursuant to this section.

(2) The commission may, in its discretion and under its rules and regulations, require any certificated carrier, any motor carrier transporting household goods under a license issued pursuant to section 75-304.03, and any motor carrier transporting employees of a railroad carrier under a license issued pursuant to section 75-304.04 to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the commission, to be conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service. Any carrier which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper or consignee under any such bond, policies of insurance, or other securities or agreements to the extent of the sum so paid.

(3) In carrying out this section, the commission may classify motor carriers and regulated motor carriers taking into consideration the hazards of the operations of such carriers and the value of the household goods carried. Nothing contained in this section shall be construed to authorize the commission to compel motor carriers other than those transporting household goods under section 75-309 or under a license issued pursuant to section 75-304.03 to carry cargo insurance.

(4) This section does not apply to transportation network companies.

Source: Laws 1963, c. 425, art. III, § 7, p. 1379; Laws 1989, LB 78, § 23; Laws 1990, LB 980, § 26; Laws 1995, LB 424, § 30; Laws 2007, LB358, § 13; Laws 2015, LB629, § 27; Laws 2020, LB461, § 10.

75-308 Tariff; publication; unlawful practices.

It is unlawful for a regulated motor carrier to engage in the transportation of passengers or, until July 1, 2021, household goods, in intrastate commerce unless the motor carrier has filed, published, and kept open for inspection its tariff schedule as provided in section 75-124 in the manner prescribed by the commission pursuant to such section. Until July 1, 2021, no regulated motor carrier shall engage in the transportation of household goods in intrastate commerce unless it has obtained a copy of the most current applicable tariff, or a tariff prepared by a tariff publishing bureau or an individual, which conforms with the rates and charges prescribed by the commission.

Source: Laws 1963, c. 425, art. III, § 8, p. 1380; Laws 1983, LB 309, § 1; Laws 1995, LB 424, § 34; Laws 2020, LB461, § 11.

75-311 Certificates; permits; designation of authority; issuance; review by commission; effect.

(1) A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied.

(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (7) of section 75-302. Otherwise the application shall be denied.

(3) A designation of authority shall be issued to any regulated motor carrier holding a certificate under subsection (1) of this section or a permit under subsection (2) of this section authorizing such carrier to provide medicaid nonemergency medical transportation services pursuant to a contract with (i) the Department of Health and Human Services, (ii) a medicaid-managed care organization under contract with the department, or (iii) another agent working on the department's behalf as provided under section 75-303.01, if it is found after notice and hearing from the application or from any hearing held on the application that the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients. In determining whether the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients, the commission shall consult with the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care of the department or his or her designee.

(4) Until July 1, 2021, no person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier for transportation of household goods by motor vehicles over the same route or within the same territory unless the commission finds that it is consistent with the public interest and with the policy declared in section 75-301.

(5) Until July 1, 2021, after the issuance of a certificate or permit, the commission shall review the operations of all common or contract carriers who hold authority from the commission to determine whether there are insufficient operations in the transportation of household goods to justify the commission's finding that such common or contract carrier has willfully failed to perform transportation under sections 75-301 to 75-322 and rules and regulations promulgated under such sections. If the commission determines that there are

insufficient operations, then the commission shall commence proceedings under section 75-315 to revoke the certificate or permit involved.

(6) This section shall not apply to transportation network companies holding a permit under section 75-324 or operations pursuant to a contract authorized by sections 75-303.02 and 75-303.03.

Source: Laws 1963, c. 425, art. III, § 11, p. 1381; Laws 1969, c. 606, § 6, p. 2471; Laws 1972, LB 1370, § 2; Laws 1974, LB 438, § 2; Laws 1989, LB 78, § 25; Laws 1990, LB 980, § 27; Laws 1993, LB 412, § 10; Laws 1994, LB 414, § 74; Laws 1995, LB 424, § 38; Laws 1996, LB 1218, § 50; Laws 2011, LB112, § 3; Laws 2015, LB629, § 30; Laws 2017, LB263, § 87; Laws 2020, LB461, § 12.

(e) SAFETY REGULATIONS

75-362 Federal regulations; terms, defined.

For purposes of sections 75-362 to 75-369.07, unless the context otherwise requires:

(1) Accident means:

(a) Except as provided in subdivision (b) of this subdivision, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

(b) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo;

(2) Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment. A large packaging in which hazardous materials are loaded with an intermediate form of containment, such as one or more articles or inner packagings, is also a bulk packaging. Additionally, a bulk packaging has:

(a) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(b) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a receptacle for a solid; or

(c) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(3) Cargo tank means a bulk packaging that:

(a) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures;

(b) Is permanently attached to or forms a part of a motor vehicle or is not permanently attached to a motor vehicle but which, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(c) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank-car tanks, portable tanks, or tank cars;

(4) Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle;

(5) Commercial enterprise means any business activity relating to or based upon the production, distribution, or consumption of goods or services;

(6) Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce or intrastate commerce to transport passengers or property when the vehicle:

(a) Has a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of ten thousand one pounds or more, whichever is greater;

(b) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(c) Is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(d) Is used in transporting material found to be hazardous and such material is transported in a quantity requiring placarding pursuant to section 75-364;

(7) Compliance review means an onsite examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action with penalties;

(8)(a) Covered farm vehicle means a motor vehicle, including an articulated motor vehicle:

(i) That:

(A) Is traveling in the state in which the vehicle is registered or another state;

(B) Is operated by:

(I) A farm owner or operator;

(II) A ranch owner or operator; or

(III) An employee or family member of an individual specified in subdivision (8)(a)(i)(B)(I) or (8)(a)(i)(B)(II) of this section;

(C) Is transporting to or from a farm or ranch:

(I) Agricultural commodities;

(II) Livestock; or

(III) Machinery or supplies;

(D) Except as provided in subdivision (8)(b) of this section, is not used in the operations of a for-hire motor carrier; and

(E) Is equipped with a special license plate or other designation by the state in which the vehicle is registered to allow for identification of the vehicle as a farm vehicle by law enforcement personnel; and

(ii) That has a gross vehicle weight rating or gross vehicle weight, whichever is greater, that is:

(A) Less than twenty-six thousand one pounds; or

(B) Twenty-six thousand one pounds or more and is traveling within the state or within one hundred fifty air miles of the farm or ranch with respect to which the vehicle is being operated.

(b) Covered farm vehicle includes a motor vehicle that meets the requirements of subdivision (8)(a) of this section, except for subdivision (8)(a)(i)(D) of this section, and:

(i) Is operated pursuant to a crop share farm lease agreement;

(ii) Is owned by a tenant with respect to that agreement; and

(iii) Is transporting the landlord's portion of the crops under that agreement.

(c) Covered farm vehicle does not include:

(i) A combination of truck-tractor and semitrailer which is operated by a person under eighteen years of age; or

(ii) A combination of truck-tractor and semitrailer which is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the combination to be placarded under 49 C.F.R. part 172, subpart F;

(9) Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(a) Inclusions: Damage to motor vehicles that could have been driven but would have been further damaged if so driven.

(b) Exclusions:

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts;

(ii) Tire disablement without other damage even if no spare tire is available;

(iii) Headlight or taillight damage; and

(iv) Damage to turnsignals, horn, or windshield wipers which makes them inoperative;

(10) Driver means any person who operates any commercial motor vehicle;

(11) Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(a) Is in a liquid phase and at a temperature at or above two hundred twelve degrees Fahrenheit;

(b) Is in a liquid phase with a flash point at or above one hundred degrees Fahrenheit that is intentionally heated and offered for transportation or transported at or above its flash point; or

(c) Is in a solid phase and at a temperature at or above four hundred sixty-four degrees Fahrenheit;

(12) Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle, including an independent contractor while in the course of operating a commercial motor vehicle, a mechanic, and a freight handler. Such term does not include an employee of the United States, any state, any political subdivision of a state, or any agency established under a compact between states and approved by the Congress of the United States who is acting within the course of such employment;

(13) Employer means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it. Such term does not include the United States, any state, any political subdivision of a state, or an agency established under a compact between states approved by the Congress of the United States;

(14) Exempt motor carrier means a person engaged in transportation exempt from economic regulation under 49 U.S.C. 13506. An exempt motor carrier is subject to the safety regulations adopted in sections 75-362 to 75-369.07;

(15) Farm vehicle driver means a person who drives only a commercial motor vehicle that is controlled and operated by a farmer as a private motor carrier of property;

(16) Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which:

(a) Are owned by that person; or

(b) Are under the direct control of that person;

(17) Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within thirty days after the accident;

(18) Fertilizer and agricultural chemical application and distribution equipment means:

(a) Self-propelled or towed equipment, designed and used exclusively to apply commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products to agricultural soil and crops; or

(b) Towed equipment designed and used exclusively to carry commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products for use on agricultural soil and crops, which are equipped with implement or floatation tires;

(19) For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation;

(20) Gross combination weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon and the empty weight of the towed unit or units plus the total weight of any load carried on such towed unit or units;

(21) Gross combination weight rating means the greater of (a) a value specified by the manufacturer of the power unit, if such value is displayed on the Federal Motor Vehicle Safety Standard certification label required by the National Highway Traffic Safety Administration, or (b) the sum of the gross vehicle weight ratings or the gross vehicle weights of the power unit and the towed unit or units, or any combination thereof, that produces the highest

value. Gross combination weight rating does not apply to a commercial motor vehicle if the power unit is not towing another vehicle;

(22) Gross vehicle weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon;

(23) Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle. In the absence of such value specified by the manufacturer or the absence of any marking of such value on the vehicle, the gross vehicle weight rating shall be determined from the sum of the axle weight ratings of the vehicle or the sum of the tire weight ratings as marked on the sidewall of the tires, whichever is greater. In the absence of any tire sidewall marking, the tire weight ratings shall be determined for the specified tires from any of the publications of any of the organizations listed in 49 C.F.R. 571.119;

(24) Hazardous material means a substance or material that the Secretary of the United States Department of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under 49 U.S.C. 5103. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. part 173;

(25) Hazardous substance means a material, including its mixtures and solutions, that is listed in 49 C.F.R. 172.101, Appendix A, List Of Hazardous Substances and Reportable Quantities, and is in a quantity, in one package, which equals or exceeds the reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This definition does not apply to petroleum products that are lubricants or fuels or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in 49 C.F.R. 171.8 under the definition of hazardous substance based on the reportable quantity specified for the materials listed in 49 C.F.R. 172.101, Appendix A;

(26) Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 C.F.R. 262;

(27) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(28) Interstate commerce means trade, traffic, or transportation provided in the furtherance of a commercial enterprise in the United States:

(a) Between a place in a state and a place outside of such state, including a place outside of the United States;

(b) Between two places in a state through another state or a place outside of the United States; or

(c) Between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States;

(29) Intrastate commerce means any trade, traffic, or transportation provided in the furtherance of a commercial enterprise between any place in the State of Nebraska and any other place in Nebraska and not through any other state;

(30) Large packaging means a packaging that:

(a) Consists of an outer packaging that contains articles or inner packagings;

(b) Is designated for mechanical handling;

(c) Exceeds a net mass of four hundred kilograms or four hundred fifty liters (one hundred nineteen gallons) capacity;

(d) Has a volume of not more than three cubic meters; and

(e) Conforms to the requirements for the construction, testing, and marking of large packagings as specified in subparts P and Q of 49 C.F.R. part 178.

(31) Marine pollutant means a material which is listed in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B, as a marine pollutant (see 49 C.F.R. 171.4 for applicability to marine pollutants) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(a) Ten percent by weight of the solution or mixture for materials listed in 49 C.F.R. 172.101, Appendix B; or

(b) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

(32) Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories. This definition includes the terms employer and exempt motor carrier;

(33) Motor vehicle means any vehicle, truck, truck-tractor, trailer, or semitrailer propelled or drawn by mechanical power except (a) farm tractors, (b) vehicles which run only on rails or tracks, and (c) road and general-purpose construction and maintenance machinery which by design and function is obviously not intended for use on a public highway, including, but not limited to, motor scrapers, earthmoving equipment, backhoes, trenchers, motor graders, compactors, tractors, bulldozers, bucket loaders, ditchdigging apparatus, asphalt spreaders, leveling graders, power shovels, and crawler tractors;

(34) Nonbulk packaging means a packaging which has:

(a) A maximum capacity of four hundred fifty liters (one hundred nineteen gallons) or less as a receptacle for a liquid;

(b) A maximum net mass of four hundred kilograms (eight hundred eighty-two pounds) or less and a maximum capacity of four hundred fifty liters (one hundred nineteen gallons) or less as a receptacle for a solid;

(c) A water capacity of four hundred fifty-four kilograms (one thousand pounds) or less as a receptacle for a gas as defined in 49 C.F.R. 173.115; or

(d) Regardless of the definition of bulk packaging, a maximum net mass of four hundred kilograms (eight hundred eighty-two pounds) or less for a bag or box conforming to the applicable requirements for specification packagings, including the maximum net mass limitations provided in subpart L of 49 C.F.R. 178;

(35) Out-of-service order means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service

pursuant to 49 C.F.R. 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws or the North American Uniform Out-of-Service Criteria;

(36) Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of Title 49 of the Code of Federal Regulations. For radioactive materials packaging, see 49 C.F.R. 173.403;

(37) Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals;

(38) Planting and harvesting season means the period beginning on January 1 up to and including December 31 of each calendar year;

(39) Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification. The motor carrier must make records required by the regulations referred to in sections 75-362 to 75-369.07 available for inspection at this location within forty-eight hours, Saturdays, Sundays, and state or federal holidays excluded, after a request has been made by an officer of the Nebraska State Patrol;

(40) Private motor carrier means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier;

(41) Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The purpose of a safety audit is to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings; and

(42) Tank means a container, consisting of a shell and heads, that forms a pressure-tight vessel having openings designed to accept pressure-tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Source: Laws 2006, LB 1007, § 14; Laws 2010, LB725, § 2; Laws 2010, LB805, § 12; Laws 2014, LB983, § 60; Laws 2016, LB311, § 23; Laws 2020, LB944, § 77.

75-363 Federal motor carrier safety regulations; provisions adopted; exceptions.

(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, as modified in this section, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2022, are adopted as Nebraska law.

(2) Except as otherwise provided in this section, the regulations shall be applicable to:

(a) All motor carriers, drivers, and vehicles to which the federal regulations apply; and

(b) All motor carriers transporting persons or property in intrastate commerce to include:

(i) All vehicles of such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds;

(ii) All vehicles of such motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation;

(iii) All vehicles of such motor carriers transporting hazardous materials required to be placarded pursuant to section 75-364; and

(iv) All drivers of such motor carriers if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license.

(3) The Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the Code of Federal Regulations:

(a) Part 382 - CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING;

(b) Part 385 - SAFETY FITNESS PROCEDURES;

(c) Part 386 - RULES OF PRACTICE FOR FMCSA PROCEEDINGS;

(d) Part 387 - MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS;

(e) Part 390 - FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL;

(f) Part 391 - QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS;

(g) Part 392 - DRIVING OF COMMERCIAL MOTOR VEHICLES;

(h) Part 393 - PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION;

(i) Part 395 - HOURS OF SERVICE OF DRIVERS;

(j) Part 396 - INSPECTION, REPAIR, AND MAINTENANCE;

(k) Part 397 - TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES; and

(l) Part 398 - TRANSPORTATION OF MIGRANT WORKERS.

(4) The provisions of subpart E - Physical Qualifications and Examinations of 49 C.F.R. part 391 - QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS shall not apply to any driver subject to this section who: (a) Operates a commercial motor vehicle exclusively in intrastate commerce; and (b) holds, or has held, a commercial driver's license issued by this state prior to July 30, 1996.

(5) The regulations adopted in subsection (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 with a gross weight of sixteen tons or less. The following parts and sections of 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 and operated solely in intrastate commerce:

(a) All of part 391;

(b) Section 395.8 of part 395; and

(c) Section 396.11 of part 396.

(6) The following parts and subparts of 49 C.F.R. chapter III shall not apply to the operation of covered farm vehicles:

(a) Part 382 - CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING;

(b) Part 391, subpart E - Physical Qualifications and Examinations;

(c) Part 395 - HOURS OF SERVICE OF DRIVERS; and

(d) Part 396 - INSPECTION, REPAIR, AND MAINTENANCE.

(7) Part 393 - PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION and Part 396 - INSPECTION, REPAIR, AND MAINTENANCE shall not apply to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less.

(8) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from 49 C.F.R. chapter III by section 390.3(f) of part 390.

(9)(a) Part 395 - HOURS OF SERVICE OF DRIVERS shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-362, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive:

(i) More than twelve hours following ten consecutive hours off duty; or

(ii) For any period after having been on duty sixteen hours following ten consecutive hours off duty.

(b) No motor carrier who engages in intrastate commerce shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive, nor shall any driver of a commercial motor vehicle drive, for any period after:

(i) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate every day of the week; or

(ii) Having been on duty eighty hours in any period of eight consecutive days if the employing motor carrier operates motor vehicles every day of the week.

(10) Part 395 - HOURS OF SERVICE OF DRIVERS, as adopted in subsections (3) and (9) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes during planting and harvesting season when:

(a) The transportation of such agricultural commodities is from the source of the commodities to a location within a one-hundred-fifty-air-mile radius of the source of the commodities;

(b) The transportation of such farm supplies is from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used which is within a one-hundred-fifty-air-mile radius of the wholesale or retail distribution point; or

(c) The transportation of such farm supplies is from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies which is within a one-hundred-fifty-air-mile radius of the wholesale distribution point.

(11) 49 C.F.R. 390.21 - Marking of self-propelled CMVs and intermodal equipment shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(12) 49 C.F.R. 392.9a - Operating authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce.

(13) No motor carrier shall permit or require a driver of a commercial motor vehicle to violate, and no driver of a commercial motor vehicle shall violate, any out-of-service order.

Source: Laws 1986, LB 301, § 1; Laws 1987, LB 224, § 23; Laws 1988, LB 884, § 1; Laws 1989, LB 285, § 140; Laws 1990, LB 980, § 29; Laws 1991, LB 854, § 3; Laws 1993, LB 410, § 1; Laws 1994, LB 1061, § 5; Laws 1995, LB 461, § 1; Laws 1996, LB 938, § 4; Laws 1997, LB 722, § 1; Laws 1998, LB 1056, § 8; Laws 1999, LB 161, § 1; Laws 1999, LB 704, § 49; Laws 2000, LB 1361, § 11; Laws 2001, LB 375, § 1; Laws 2002, LB 499, § 5; Laws 2003, LB 480, § 2; Laws 2004, LB 878, § 1; Laws 2005, LB 83, § 1; Laws 2005, LB 274, § 271; Laws 2006, LB 1007, § 13; Laws 2007, LB239, § 8; Laws 2008, LB756, § 28; Laws 2008, LB845, § 1; Laws 2009, LB48, § 1; Laws 2009, LB331, § 15; Laws 2010, LB725, § 3; Laws 2010, LB805, § 13; Laws 2011, LB178, § 21; Laws 2011, LB212, § 7; Laws 2012, LB751, § 49; Laws 2013, LB35, § 6; Laws 2014, LB983, § 61; Laws 2015, LB313, § 7; Laws 2016, LB929, § 11; Laws 2017, LB263, § 88; Laws 2018, LB909, § 121; Laws 2019, LB79, § 22; Laws 2020, LB944, § 78; Laws 2021, LB149, § 21; Laws 2022, LB750, § 79. Operative date July 21, 2022.

Cross References

Violation of section, penalty, see section 75-367.

75-364 Additional federal motor carrier regulations; provisions adopted.

The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2022, are adopted as part of Nebraska law and shall be applicable to all motor carriers whether engaged in interstate or intrastate commerce, drivers of such motor carriers, and vehicles of such motor carriers:

(1) Part 107 - HAZARDOUS MATERIALS PROGRAM PROCEDURES, subpart F - Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers;

(2) Part 107 - HAZARDOUS MATERIALS PROGRAM PROCEDURES, subpart G - Registration of Persons Who Offer or Transport Hazardous Materials;

(3) Part 171 - GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS;

(4) Part 172 - HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS;

(5) Part 173 - SHIPPERS - GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS;

(6) Part 177 - CARRIAGE BY PUBLIC HIGHWAY;

(7) Part 178 - SPECIFICATIONS FOR PACKAGINGS; and

(8) Part 180 - CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS.

Source: Laws 1986, LB 301, § 2; Laws 1987, LB 538, § 1; Laws 1988, LB 884, § 2; Laws 1990, LB 980, § 30; Laws 1991, LB 854, § 4; Laws 1993, LB 410, § 2; Laws 1994, LB 1061, § 6; Laws 1995, LB 461, § 2; Laws 1996, LB 938, § 5; Laws 1997, LB 722, § 2; Laws 1998, LB 1056, § 9; Laws 1999, LB 161, § 2; Laws 2000, LB 1361, § 12; Laws 2001, LB 375, § 2; Laws 2002, LB 499, § 6; Laws 2003, LB 480, § 3; Laws 2004, LB 878, § 2; Laws 2005, LB 83, § 2; Laws 2006, LB 1007, § 15; Laws 2007, LB239, § 9; Laws 2008, LB756, § 29; Laws 2009, LB48, § 2; Laws 2009, LB331, § 16; Laws 2010, LB805, § 14; Laws 2011, LB178, § 22; Laws 2011, LB212, § 8; Laws 2012, LB751, § 50; Laws 2013, LB35, § 7; Laws 2014, LB983, § 62; Laws 2015, LB313, § 8; Laws 2016, LB929, § 12; Laws 2017, LB263, § 89; Laws 2018, LB909, § 122; Laws 2019, LB79, § 23; Laws 2020, LB944, § 79; Laws 2021, LB149, § 22; Laws 2022, LB750, § 80.
Operative date July 21, 2022.

75-366 Enforcement powers.

For the purpose of enforcing Chapter 75, article 3, any officer of the Nebraska State Patrol may, upon demand, inspect the accounts, records, and equipment of any motor carrier or shipper. Any officer of the Nebraska State Patrol shall have the authority to enforce the federal motor carrier safety regulations, as such regulations existed on January 1, 2022, and federal hazardous materials regulations, as such regulations existed on January 1, 2022, and is authorized to enter upon, inspect, and examine any and all lands, buildings, and equipment of any motor carrier, any shipper, and any other person subject to the federal Interstate Commerce Act, the federal Department of Transportation Act, and other related federal laws and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of a motor carrier, a shipper, and any other person subject to Chapter 75, article 3, for the purposes of enforcing Chapter 75, article 3. To promote uniformity of enforcement, the carrier enforcement division of the Nebraska State Patrol shall cooperate and consult with the Public Service Commission and the Division of Motor Carrier Services.

Source: Laws 1986, LB 301, § 4; Laws 1987, LB 538, § 2; Laws 1990, LB 980, § 31; Laws 1995, LB 424, § 48; Laws 1996, LB 1218, § 60; Laws 2002, LB 93, § 18; Laws 2003, LB 480, § 4; Laws 2012, LB751, § 51; Laws 2013, LB35, § 8; Laws 2014, LB983, § 63; Laws 2015, LB313, § 9; Laws 2016, LB929, § 13; Laws 2017, LB263, § 90; Laws 2018, LB909, § 123; Laws 2019, LB79, § 24; Laws 2020, LB944, § 80; Laws 2021, LB149, § 23; Laws 2022, LB750, § 81.
Operative date July 21, 2022.

75-369.03 Violations; civil penalty; referral to federal agency or Public Service Commission; when.

(1) The Superintendent of Law Enforcement and Public Safety may issue an order imposing a civil penalty against a motor carrier transporting persons or property in interstate commerce for a violation of sections 75-392 to 75-3,100 or against a motor carrier transporting persons or property in intrastate commerce for a violation or violations of section 75-363 or 75-364 based upon an inspection conducted pursuant to section 75-366 in an amount which shall not exceed eight hundred forty-eight dollars for any single violation in any proceeding or series of related proceedings against any person or motor carrier as defined in 49 C.F.R. 390.5 as adopted in section 75-363.

(2) The superintendent shall issue an order imposing a civil penalty in an amount not to exceed sixteen thousand nine hundred forty-one dollars against a motor carrier transporting persons or property in interstate commerce for a violation of subdivision (2)(e) of section 60-4,162 based upon a conviction of such a violation.

(3) The superintendent shall issue an order imposing a civil penalty against a driver operating a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license or CLP-commercial learner's permit, in violation of an out-of-service order. The civil penalty shall be in an amount not less than three thousand two hundred sixty-eight dollars for a first violation and not less than six thousand five hundred thirty-six dollars for a second or subsequent violation.

(4) The superintendent shall issue an order imposing a civil penalty against a motor carrier who knowingly allows, requires, permits, or authorizes the operation of a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license or CLP-commercial learner's permit, in violation of an out-of-service order. The civil penalty shall be not less than five thousand nine hundred two dollars but not more than thirty-two thousand six hundred seventy-nine dollars per violation.

(5) Upon the discovery of any violation by a motor carrier transporting persons or property in interstate commerce of section 75-307, 75-363, or 75-364 or sections 75-392 to 75-3,100 based upon an inspection conducted pursuant to section 75-366, the superintendent shall immediately refer such violation to the appropriate federal agency for disposition, and upon the discovery of any violation by a motor carrier transporting persons or property in intrastate commerce of section 75-307 based upon such inspection, the superintendent shall refer such violation to the Public Service Commission for disposition.

Source: Laws 1994, LB 358, § 3; Laws 1996, LB 1218, § 62; Laws 2002, LB 499, § 7; Laws 2006, LB 1007, § 20; Laws 2007, LB358, § 14; Laws 2008, LB845, § 2; Laws 2009, LB331, § 17; Laws 2014, LB983, § 64; Laws 2017, LB263, § 91; Laws 2018, LB909, § 124; Laws 2020, LB944, § 81; Laws 2022, LB750, § 82.
Operative date July 21, 2022.

(j) DIVISION OF MOTOR CARRIER SERVICES

75-386 Division of Motor Carrier Services; duties.

The Division of Motor Carrier Services shall:

(1) Foster, promote, and preserve the motor carrier industry of the State of Nebraska;

(2) Protect and promote the public health and welfare of the citizens of the state by ensuring that the motor carrier industry is operated in an efficient and safe manner;

(3) Promote and provide for efficient and uniform governmental oversight of the motor carrier industry;

(4) Promote financial responsibility on the part of motor carriers operating in and through the State of Nebraska;

(5) Administer all provisions of the International Fuel Tax Agreement Act, the International Registration Plan Act, and the unified carrier registration plan and agreement pursuant to sections 75-392 to 75-3,100;

(6) Provide for the issuance of certificates of title to apportioned registered motor vehicles as provided for by subsection (6) of section 60-144; and

(7) Carry out such other duties and responsibilities as directed by the Legislature.

Source: Laws 1996, LB 1218, § 2; Laws 2003, LB 563, § 41; Laws 2005, LB 276, § 110; Laws 2005, LB 284, § 4; Laws 2007, LB358, § 17; Laws 2009, LB331, § 18; Laws 2020, LB944, § 82.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.
International Registration Plan Act, see section 60-3,192.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-392 Terms, defined.

For purposes of sections 75-392 to 75-3,100:

(1) Director means the Director of Motor Vehicles;

(2) Division means the Division of Motor Carrier Services of the Department of Motor Vehicles; and

(3) Unified carrier registration plan and agreement means the plan and agreement established and authorized pursuant to 49 U.S.C. 14504a, as such section existed on January 1, 2022.

Source: Laws 2007, LB358, § 1; Laws 2014, LB776, § 7; Laws 2016, LB929, § 14; Laws 2017, LB263, § 92; Laws 2018, LB909, § 125; Laws 2019, LB79, § 25; Laws 2020, LB944, § 83; Laws 2021, LB149, § 24; Laws 2022, LB750, § 83.
Operative date July 21, 2022.

75-393 Unified carrier registration plan and agreement; director; powers.

The director may participate in the unified carrier registration plan and agreement pursuant to the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as the act existed on January 1, 2022, and may file on behalf of this state the plan required by such plan and agreement for enforcement of the act in this state.

Source: Laws 2007, LB358, § 2; Laws 2009, LB331, § 19; Laws 2011, LB212, § 9; Laws 2012, LB751, § 52; Laws 2013, LB35, § 9; Laws 2014, LB776, § 8; Laws 2015, LB313, § 10; Laws 2016, LB929, § 15; Laws 2017, LB263, § 93; Laws 2018, LB909,

§ 126; Laws 2019, LB79, § 26; Laws 2020, LB944, § 84; Laws 2021, LB149, § 25; Laws 2022, LB750, § 84.
Operative date July 21, 2022.

75-398 Violations; penalty.

Any foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder operating any motor vehicle in violation of sections 75-392 to 75-3,100, any rule or regulation adopted and promulgated pursuant to such sections, or any order of the division issued pursuant to such sections is guilty of a Class IV misdemeanor and shall also be subject to section 75-369.03. Each day of the violation constitutes a separate offense.

Source: Laws 2007, LB358, § 7; Laws 2009, LB331, § 23; Laws 2020, LB944, § 85.

75-399 Sections not applicable to intrastate commerce.

Sections 75-392 to 75-3,100 do not apply to a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder, including a transporter of waste or recyclable materials, engaged exclusively in intrastate commerce.

Source: Laws 2007, LB358, § 8; Laws 2020, LB944, § 86.

75-3,100 Registration; suspend, revoke, cancel, or refuse to issue or renew; conditions; notice; hearing; petition.

(1) The director may suspend, revoke, cancel, or refuse to issue or renew a registration pursuant to the unified carrier registration plan and agreement:

(a) If the applicant or registrant has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or refused to renew such license;

(b) If the applicant's or registrant's registration certificate issued pursuant to the International Registration Plan Act has been suspended, revoked, or canceled or the director refused to issue or renew such certificate; or

(c) If the applicant or registrant is in violation of sections 75-392 to 75-3,100.

(2) Prior to taking any action pursuant to subsection (1) of this section, the director shall notify and advise the applicant or registrant of the proposed action and the reasons for such action in writing, by regular United States mail, to the last-known business address as shown on the application for the registration or renewal. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or registrant may, within thirty days after the mailing of the notice, petition the director in writing for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the Administrative Procedure Act. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or registrant may show cause why the proposed action should not be taken. The director shall give the applicant or registrant reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or registrant, such person may appeal the decision in accordance with the Administrative Procedure Act.

(4) The filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) If no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) If, in the judgment of the director, the applicant or registrant has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the registration without delay.

Source: Laws 2020, LB944, § 87; Laws 2021, LB113, § 33.

Cross References

Administrative Procedure Act, see section 84-920.
International Fuel Tax Agreement Act, see section 66-1401.
International Registration Plan Act, see section 60-3,192.

ARTICLE 11

211 INFORMATION AND REFERRAL NETWORK

Section
75-1101. 211 Information and Referral Network; Public Service Commission; award grant; application; eligibility; use; 211 Cash Fund; created; use; investment.

75-1101 211 Information and Referral Network; Public Service Commission; award grant; application; eligibility; use; 211 Cash Fund; created; use; investment.

(1) For purposes of this section, 211 Information and Referral Network means a statewide information and referral network providing information to the public regarding disaster and emergency response and health and human services provided by public and private entities throughout the state.

(2) The Public Service Commission shall award a grant annually to a 211 Information and Referral Network which submits an application and meets the requirements of this section. Beginning July 1, 2022, the amount of each grant shall be nine hundred fifty-five thousand dollars.

(3) To be eligible for a grant, the 211 Information and Referral Network shall update the information and referral services on the network at least annually, shall geographically index the services to provide information on a county-by-county basis, and shall be accredited as meeting the standards for service delivery and quality by the Alliance of Information and Referral Systems or a similar organization approved by the commission.

(4) The grant may be used to establish a website which includes links to providers of health and human services, the name, address, and telephone number of any organization listed on the website, a description of the type of services provided by the organization, and other information to educate the public about the health and human services available on a geographic basis. The grant may also be used to provide access to the network twenty-four hours per day, seven days per week, through telephone access and website access.

(5) There is hereby created the 211 Cash Fund. The fund shall be used solely for the purpose of providing grants pursuant to this section and associated administrative costs. All money received by the Public Service Commission for such grants shall be remitted to the State Treasurer for credit to such fund. Any

money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2019, LB641, § 1; Laws 2022, LB1012, § 12.
Effective date April 5, 2022.

Cross References

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

CHAPTER 76
REAL PROPERTY

Article.
2. Conveyances.
(q) Real Estate Closing Agents. 76-2,121.
(u) Uniform Easement Relocation Act. 76-2,127 to 76-2,140.
7. Eminent Domain. 76-711.
8. Condominium Law.
(a) Condominium Property Act. 76-808, 76-816.
(c) Nebraska Condominium Act.
Creation, Alteration, and Termination of Condominiums. 76-842 to 76-857.
Management of Condominium. 76-859 to 76-870.
Protection of Condominium Purchasers. 76-884, 76-890.
10. Trust Deeds. 76-1011 to 76-1018.
14. Landlord and Tenant.
(a) Uniform Residential Landlord and Tenant Act. 76-1401 to 76-1443.
(b) Mobile Home Landlord and Tenant Act. 76-1485 to 76-14,101.
15. Agricultural Lands, Special Provisions.
(d) Reports on Farming or Ranching. 76-1522.
22. Real Property Appraiser Act. 76-2201 to 76-2247.01.
23. One-Call Notification System. 76-2301 to 76-2332.
26. Uniform Environmental Covenants Act. 76-2602, 76-2608.
32. Nebraska Appraisal Management Company Registration Act. 76-3202 to 76-3216.
34. Nebraska Uniform Real Property Transfer on Death Act. 76-3413.
35. Radon Resistant New Construction Act. 76-3501 to 76-3507.
36. Home Inspection. 76-3601 to 76-3606.

ARTICLE 2
CONVEYANCES

(q) REAL ESTATE CLOSING AGENTS

Section
76-2,121. Real estate closing agents; terms, defined.

(u) UNIFORM EASEMENT RELOCATION ACT

76-2,127. Short title.
76-2,128. Definitions.
76-2,129. Scope; exclusions.
76-2,130. Right of servient estate owner to relocate easement.
76-2,131. Commencement of civil action.
76-2,132. Required findings; order.
76-2,133. Expenses of relocation.
76-2,134. Duty to act in good faith.
76-2,135. Relocation affidavit.
76-2,136. Limited effect of relocation.
76-2,137. Nonwaiver.
76-2,138. Uniformity of application and construction.
76-2,139. Relation to Electronic Signatures in Global and National Commerce Act.
76-2,140. Act; applicability.

(q) REAL ESTATE CLOSING AGENTS

76-2,121 Real estate closing agents; terms, defined.

For purposes of sections 76-2,121 to 76-2,123:

(1) Federally insured financial institution shall mean an institution in which the monetary deposits are insured by the Federal Deposit Insurance Corporation or National Credit Union Administration;

(2) Good funds shall mean: (a) Lawful money of the United States; (b) wired funds when unconditionally held by the real estate closing agent or employee; (c) cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the real estate closing agent or employee; or (d) United States treasury checks, federal reserve bank checks, federal home loan bank checks, State of Nebraska warrants, and warrants of a city of the metropolitan or primary class;

(3) Real estate closing agent shall mean a person who collects and disburses funds on behalf of another in closing a real estate transaction but shall not include a seller or buyer closing a real estate transaction on his or her own behalf or a lender closing a real estate loan transaction; and

(4) Regulating entity shall mean the:

(a) Department of Insurance;

(b) Supreme Court;

(c) State Real Estate Commission;

(d) Department of Banking and Finance;

(e) Federal Deposit Insurance Corporation;

(f) Office of the Comptroller of the Currency;

(g) Consumer Financial Protection Bureau;

(h) Federal Farm Credit Administration; or

(i) National Credit Union Administration.

Source: Laws 1994, LB 1275, § 1; Laws 1999, LB 248, § 1; Laws 2019, LB258, § 16.

(u) UNIFORM EASEMENT RELOCATION ACT

76-2,127 Short title.

Sections 76-2,127 to 76-2,140 shall be known and may be cited as the Uniform Easement Relocation Act.

Source: Laws 2021, LB501, § 64.

76-2,128 Definitions.

In the Uniform Easement Relocation Act:

(1) Appurtenant easement means an easement tied to or dependent on ownership or occupancy of a unit or a parcel of real property.

(2) Conservation easement means a nonpossessory property interest created for one or more of the following conservation purposes:

(A) retaining or protecting the natural, scenic, wildlife, wildlife-habitat, biological, ecological, or open-space values of real property;

(B) ensuring the availability of real property for agricultural, forest, outdoor-recreational, or open-space uses;

(C) protecting natural resources, including wetlands, grasslands, and riparian areas;

(D) maintaining or enhancing air or water quality;

(E) preserving the historical, architectural, archeological, paleontological, or cultural aspects of real property; or

(F) any other purpose under the Conservation and Preservation Easements Act.

(3) Dominant estate means an estate or interest in real property benefited by an appurtenant easement.

(4) Easement means a nonpossessory property interest that:

(A) provides a right to enter, use, or enjoy real property owned by or in the possession of another; and

(B) imposes on the owner or possessor a duty not to interfere with the entry, use, or enjoyment permitted by the instrument creating the easement or, in the case of an easement not established by express grant or reservation, the entry, use, or enjoyment authorized by law.

(5) Easement holder means:

(A) in the case of an appurtenant easement, the dominant estate owner; or

(B) in the case of an easement in gross, public utility easement, conservation easement, or negative easement, the grantee of the easement or a successor.

(6) Easement in gross means an easement not tied to or dependent on ownership or occupancy of a unit or a parcel of real property.

(7) Lessee of record means a person holding a lessee's interest under a recorded lease or memorandum of lease.

(8) Negative easement means a nonpossessory property interest whose primary purpose is to impose on a servient estate owner a duty not to engage in a specified use of the estate.

(9) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(10) Public utility easement means a nonpossessory property interest in which the easement holder is a publicly regulated or publicly owned utility under federal law or law of this state or a municipality. The term includes an easement benefiting an intrastate utility, an interstate utility, or a utility cooperative.

(11) Real property means an estate or interest in, over, or under land, including structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of land whether or not described or mentioned in the contract of sale or instrument of conveyance. The term includes the interest of a lessor and lessee and, unless the interest is personal property under law of this state other than the Uniform Easement Relocation Act, an interest in a common interest community.

(12) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) Security instrument means a mortgage, deed of trust, security deed, contract for deed, lease, or other record that creates or provides for an interest in real property to secure payment or performance of an obligation, whether by

acquisition or retention of a lien, a lessor's interest under a lease, or title to the real property. The term includes:

(A) a security instrument that also creates or provides for a security interest in personal property;

(B) a modification or amendment of a security instrument; and

(C) a record creating a lien on real property to secure an obligation under a covenant running with the real property or owed by a unit owner to a common interest community association.

(14) Security interest holder of record means a person holding an interest in real property created by a recorded security instrument.

(15) Servient estate means an estate or interest in real property that is burdened by an easement.

(16) Title evidence means a title insurance policy, preliminary title report or binder, title insurance commitment, abstract of title, attorney's opinion of title based on examination of public records or an abstract of title, or any other means of reporting the state of title to real property which is customary in the locality.

(17) Unit means a physical portion of a common interest community designated for separate ownership or occupancy with boundaries described in a declaration establishing the common interest community.

(18) Utility cooperative means a nonprofit entity whose purpose is to deliver a utility service, such as electricity, oil, natural gas, water, sanitary sewer, storm water, or telecommunications, to its customers or members and includes an electric cooperative, rural electric cooperative, rural water district, and rural water association.

Source: Laws 2021, LB501, § 65.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

76-2,129 Scope; exclusions.

(a) Except as otherwise provided in subsection (b) of this section, the Uniform Easement Relocation Act applies to an easement established by express grant or reservation or by prescription, implication, necessity, estoppel, or other method.

(b) The Uniform Easement Relocation Act may not be used to relocate:

(1) a public utility easement, conservation easement, or negative easement;

(2) an easement or right-of-way held by a public power and irrigation district, irrigation district, reclamation district, or canal company; or

(3) an easement if the proposed location would encroach on an area of an estate burdened by a conservation easement or would interfere with the use or enjoyment of a public utility easement or an easement appurtenant to a conservation easement.

(c) The Uniform Easement Relocation Act does not apply to relocation of an easement by consent.

Source: Laws 2021, LB501, § 66.

76-2,130 Right of servient estate owner to relocate easement.

A servient estate owner may relocate an easement under the Uniform Easement Relocation Act only if the relocation does not materially:

(1) lessen the utility of the easement;

(2) after the relocation, increase the burden on the easement holder in its reasonable use and enjoyment of the easement;

(3) impair an affirmative, easement-related purpose for which the easement was created;

(4) during or after the relocation, impair the safety of the easement holder or another entitled to use and enjoy the easement;

(5) during the relocation, disrupt the use and enjoyment of the easement by the easement holder or another entitled to use and enjoy the easement, unless the servient estate owner substantially mitigates the duration and nature of the disruption;

(6) impair the physical condition, use, or value of the dominant estate or improvements on the dominant estate; or

(7) impair the value of the collateral of a security interest holder of record in the servient estate or dominant estate, impair a real property interest of a lessee of record in the dominant estate, or impair a recorded real property interest of any other person in the servient estate or dominant estate.

Source: Laws 2021, LB501, § 67.

76-2,131 Commencement of civil action.

(a) To obtain an order to relocate an easement under the Uniform Easement Relocation Act, a servient estate owner must commence a civil action.

(b) A servient estate owner that commences a civil action under subsection (a) of this section:

(1) shall serve a summons and complaint on:

(A) the easement holder whose easement is the subject of the relocation;

(B) a security interest holder of record of an interest in the servient estate or dominant estate;

(C) a lessee of record of an interest in the dominant estate; and

(D) except as otherwise provided in subdivision (2) of this subsection, any other owner of a recorded real property interest if the relocation would encroach on an area of the servient estate or dominant estate burdened by the interest; and

(2) is not required to serve a summons and complaint on the owner of a recorded real property interest in oil, gas, or minerals unless the interest includes an easement to facilitate oil, gas, or mineral development.

(c) A complaint under this section must state:

(1) the intent of the servient estate owner to seek the relocation;

(2) the nature, extent, and anticipated dates of commencement and completion of the proposed relocation;

(3) the current and proposed locations of the easement;

(4) the reason the easement is eligible for relocation under section 76-2,129;

(5) the reason the proposed relocation satisfies the conditions for relocation under section 76-2,130; and

(6) that the servient estate owner has made a reasonable attempt to notify the holders of any public utility easement, conservation easement, or negative easement on the servient estate or dominant estate of the proposed relocation.

(d) At any time before the court renders a final order in an action under subsection (a) of this section, a person served under subdivision (b)(1)(B), (C), or (D) of this section may file a document, in recordable form, that waives its rights to contest or obtain relief in connection with the relocation or subordinates its interests to the relocation. On filing of the document, the court may order that the person is not required to answer or participate further in the action.

Source: Laws 2021, LB501, § 68.

76-2,132 Required findings; order.

(a) The court may not approve relocation of an easement under the Uniform Easement Relocation Act unless the servient estate owner:

(1) establishes that the easement is eligible for relocation under section 76-2,129; and

(2) satisfies the conditions for relocation under section 76-2,130.

(b) An order under the Uniform Easement Relocation Act approving relocation of an easement must:

(1) state that the order is issued in accordance with the Uniform Easement Relocation Act;

(2) recite the recording data of the instrument creating the easement, if any, any amendments, and any notice as described under sections 76-288 to 76-298;

(3) identify the immediately preceding location of the easement;

(4) describe in a legally sufficient manner the new location of the easement;

(5) describe mitigation required of the servient estate owner during relocation;

(6) refer in detail to the plans and specifications of improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;

(7) specify conditions to be satisfied by the servient estate owner to relocate the easement and construct improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;

(8) include a provision for payment by the servient estate owner of expenses under section 76-2,133;

(9) include a provision for compliance by the parties with the obligation of good faith under section 76-2,134; and

(10) instruct the servient estate owner to record an affidavit, if required under subsection (a) of section 76-2,135, when the servient estate owner substantially completes relocation.

(c) An order under subsection (b) of this section may include any other provision consistent with the Uniform Easement Relocation Act for the fair and equitable relocation of the easement.

(d) Before a servient estate owner proceeds with relocation of an easement under the Uniform Easement Relocation Act, the owner must record, in the

land records of each jurisdiction where the servient estate is located, a certified copy of the order under subsection (b) of this section.

Source: Laws 2021, LB501, § 69.

76-2,133 Expenses of relocation.

A servient estate owner is responsible for reasonable expenses of relocation of an easement under the Uniform Easement Relocation Act, including the expense of:

(1) constructing improvements on the servient estate or dominant estate in accordance with an order under section 76-2,132;

(2) during the relocation, mitigating disruption in the use and enjoyment of the easement by the easement holder or another person entitled to use and enjoy the easement;

(3) obtaining a governmental approval or permit to relocate the easement and construct necessary improvements;

(4) preparing and recording the certified copy required by subsection (d) of section 76-2,132 and any other document required to be recorded;

(5) any title work required to complete the relocation or required by a party to the civil action as a result of the relocation;

(6) applicable premiums for title insurance related to the relocation;

(7) any expert necessary to review plans and specifications for an improvement to be constructed in the relocated easement or on the dominant estate and to confirm compliance with the plans and specifications referred to in the order under subdivision (b)(6) of section 76-2,132;

(8) payment of any maintenance cost associated with the relocated easement which is greater than the maintenance cost associated with the easement before relocation; and

(9) obtaining any third-party consent required to relocate the easement.

Source: Laws 2021, LB501, § 70.

76-2,134 Duty to act in good faith.

After the court, under section 76-2,132, approves relocation of an easement and the servient estate owner commences the relocation, the servient estate owner, the easement holder, and other parties in the civil action shall act in good faith to facilitate the relocation in compliance with the Uniform Easement Relocation Act.

Source: Laws 2021, LB501, § 71.

76-2,135 Relocation affidavit.

(a) If an order under section 76-2,132 requires the construction of an improvement as a condition for relocation of an easement, relocation is substantially complete, and the easement holder is able to enter, use, and enjoy the easement in the new location, the servient estate owner shall:

(1) record, in the land records of each jurisdiction where the servient estate is located, an affidavit certifying that the easement has been relocated; and

(2) send, by certified mail, a copy of the recorded affidavit to the easement holder and parties to the civil action.

(b) Until an affidavit under subsection (a) of this section is recorded and sent, the easement holder may enter, use, and enjoy the easement in the current location, subject to the court's order under section 76-2,132 approving relocation.

(c) If an order under section 76-2,132 does not require an improvement to be constructed as a condition of the relocation, recording the order under subsection (d) of section 76-2,132 constitutes relocation.

Source: Laws 2021, LB501, § 72.

76-2,136 Limited effect of relocation.

(a) Relocation of an easement under the Uniform Easement Relocation Act:

(1) is not a new transfer or a new grant of an interest in the servient estate or the dominant estate;

(2) is not a breach or default of, and does not trigger, a due-on-sale clause or other transfer-restriction clause under a security instrument, except as otherwise determined by a court under law other than the Uniform Easement Relocation Act;

(3) is not a breach or default of a lease, except as otherwise determined by a court under law other than the Uniform Easement Relocation Act;

(4) is not a breach or default by the servient estate owner of a recorded document affected by the relocation, except as otherwise determined by a court under law other than the Uniform Easement Relocation Act;

(5) does not affect the priority of the easement with respect to other recorded real property interests burdening the area of the servient estate where the easement was located before the relocation; and

(6) is not a fraudulent conveyance or voidable transaction under law.

(b) The Uniform Easement Relocation Act does not affect any other method of relocating an easement permitted under law of this state other than the Uniform Easement Relocation Act.

Source: Laws 2021, LB501, § 73.

76-2,137 Nonwaiver.

The right of a servient estate owner to relocate an easement under the Uniform Easement Relocation Act may not be waived, excluded, or restricted by agreement even if:

(1) the instrument creating the easement prohibits relocation or contains a waiver, exclusion, or restriction of the Uniform Easement Relocation Act;

(2) the instrument creating the easement requires consent of the easement holder to amend the terms of the easement; or

(3) the location of the easement is fixed by the instrument creating the easement, another agreement, previous conduct, acquiescence, estoppel, or implication.

Source: Laws 2021, LB501, § 74.

76-2,138 Uniformity of application and construction.

In applying and construing the Uniform Easement Relocation Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Source: Laws 2021, LB501, § 75.

76-2,139 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Easement Relocation Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2021, LB501, § 76.

76-2,140 Act; applicability.

The Uniform Easement Relocation Act applies to an easement created before, on, or after August 28, 2021.

Source: Laws 2021, LB501, § 77.

ARTICLE 7

EMINENT DOMAIN

Section
76-711. Condemner; interest in property; deposit of awards; abandonment; appeal; interest; writ of assistance; removal of property; liability.

76-711 Condemner; interest in property; deposit of awards; abandonment; appeal; interest; writ of assistance; removal of property; liability.

The condemner shall not acquire any interest in or right to possession of the property condemned until he or she has deposited with the court the amount of the condemnation award in effect at the time the deposit is made. The condemner shall have sixty days from the date of the award of the appraisers to deposit with the court the amount of the award or the proceeding will be considered as abandoned. When the amount of the award is deposited with the court by the condemner, the condemner shall be deemed to have accepted the award unless he or she gives notice of appeal from the award of the appraisers pursuant to section 76-715. If the proceeding is abandoned, proceedings may not again be instituted by the condemner to condemn the property within two years from the date of abandonment.

If an appeal is taken from the award of the appraisers by the condemnee and the condemnee obtains a greater amount than that allowed by the appraisers, the condemnee shall be entitled to interest from the date of the deposit at the rate provided in section 45-104.02, as such rate may from time to time be adjusted, compounded annually, on the amount finally allowed, less interest at the same rate on the amount withdrawn or on the amount which the condemner offers to stipulate for withdrawal as provided by section 76-719.01. If an appeal is taken from the award of the appraisers by the condemner, the condemnee shall be entitled to interest from the date of deposit at the rate provided in section 45-104.02, as such rate may from time to time be adjusted, compounded annually, on the amount finally allowed, less interest at the same

rate on the amount withdrawn or on the amount which the condemner offers to stipulate for withdrawal as agreed to by the condemnee as provided by section 76-719.01.

Upon deposit of the condemnation award with the court, the condemner shall be entitled to a writ of assistance to place him or her in possession of the property condemned and the condemnee shall be liable for diminution in the value of the property caused by the condemnee's purposeful removal of real or personal property not previously agreed to in writing by the condemner and condemnee from the condemned property.

Source: Laws 1951, c. 101, § 11, p. 454; Laws 1959, c. 351, § 1, p. 1240; Laws 1961, c. 369, § 1, p. 1141; Laws 1971, LB 191, § 1; Laws 1982, LB 705, § 1; Laws 1987, LB 601, § 5; Laws 1990, LB 1153, § 59; Laws 1992, Fourth Spec. Sess., LB 1, § 12; Laws 2021, LB355, § 5.

ARTICLE 8

CONDOMINIUM LAW

(a) CONDOMINIUM PROPERTY ACT

(c) NEBRASKA CONDOMINIUM ACT

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

MANAGEMENT OF CONDOMINIUM

PROTECTION OF CONDOMINIUM PURCHASERS

(a) CONDOMINIUM PROPERTY ACT

76-808 Co-owner; use of common elements; responsibility for maintenance, repair, and replacement.

(1) Each co-owner may use the elements held in common in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners.

(2) The association of co-owners and board of administrators, or other administrative body governing the condominium, is responsible for mainte-

nance, repair, and replacement of the common elements. Each co-owner of an apartment is responsible for maintenance, repair, and replacement of such co-owner's apartment.

Source: Laws 1963, c. 429, § 8, p. 1439; Laws 2019, LB42, § 1.

76-816 Board of administrators; records; examination; condominium statement; filing with register of deeds.

(1) The board of administrators or other administrative body specified in the bylaws shall keep or cause to be kept a book with a detailed account, in chronological order, of the receipts and expenditures affecting the condominium property regime and its administration and specifying the maintenance and repair expenses of the common elements and all other expenses incurred. Both the book and the vouchers accrediting the entries made thereupon shall be available for examination by any co-owner or any prospective purchaser at convenient hours on working days that shall be set and announced for general knowledge. Any prospective purchaser must be designated as such by a co-owner in writing. For condominiums created in this state before January 1, 1984, the provision on the records of the administrative body or association in section 76-876 shall apply to the extent necessary in construing the provisions of sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-869, 76-874, 76-876, 76-884, and 76-891.01, and subdivisions (a)(1) to (a)(6) and (a)(11) to (a)(16) of section 76-860 which apply to events and circumstances which occur after January 1, 1984.

(2) The association of co-owners and board of administrators, or other administrative body governing the condominium property regime, and its common elements, shall file with the register of deeds of the county in which the condominium is located a condominium statement listing the name of such board or other administrative body and the names and addresses of the current officers of such board or other administrative body. Such filing shall be made every year on or before December 31. The receipt of any legal notice by or service of process on such officer personally or at such officer's filed address shall constitute notice to the board or other administrative body administering the condominium and its common elements. If the board or other administrative body fails to make the filing required by this subsection, the posting of the legal notice or process at the entrance, main office, or other prominent location in the common area of the condominium shall constitute notice to the board or other administrative body until such filing is made.

Source: Laws 1963, c. 429, § 16, p. 1442; Laws 1974, LB 730, § 9; Laws 1983, LB 433, § 77; Laws 1993, LB 478, § 6; Laws 2019, LB42, § 2.

(c) NEBRASKA CONDOMINIUM ACT

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

76-842 Declaration; contents.

(a) The declaration for a condominium must contain:

(1) the name of the condominium, which must include the word condominium or be followed by the words a condominium, and the name of the association;

(2) the name of every county in which any part of the condominium is situated;

(3) a legally sufficient description of the real estate included in the condominium;

(4) a statement of the anticipated number of units which the declarant reserves the right to create, subject to an amendment of the declaration to add more units pursuant to the Nebraska Condominium Act;

(5) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(6) a description of any limited common elements, other than those specified in subdivision (b)(8) of section 76-846;

(7) a general description of any development rights and other special declarant rights defined in subdivision (23) of section 76-827 reserved by the declarant;

(8) an allocation to each unit of the allocated interests in the manner described in section 76-844;

(9) any restrictions on use, occupancy, and alienation of the units;

(10) for a condominium project with more than fifteen units, exclusive of common area, a plan prepared by a licensed engineer or architect for the preventive maintenance of the condominium and all common elements therein, including, but not limited to, depreciation studies and reserve analyses, an annually updated five-year capital plan, and minimum financial reserves based on the reserve analyses; and

(11) all matters required by sections 76-843 to 76-846, 76-852, and 76-853, and subsection (d) of section 76-861.

(b) Except as otherwise provided in section 76-856, the declaration may contain any other matters the declarant deems appropriate.

Source: Laws 1983, LB 433, § 18; Laws 2013, LB442, § 3; Laws 2020, LB808, § 41.

76-844 Allocation of common elements, expenses, and votes; how made.

(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide: (i) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by the Nebraska Condominium Act, nor may units constitute a class because they are owned by a declarant.

(d) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(e) The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, is void.

Source: Laws 1983, LB 433, § 20; Laws 2020, LB808, § 42.

76-854 Amendment to declaration; procedure.

(a) Except in cases of amendments that may be executed by (1) a declarant under subsection (f) of section 76-846 or under section 76-847, (2) the association under section 76-831 or 76-850, subsection (d) of section 76-843, subsection (c) of section 76-845, or subsection (a) of section 76-849, or (3) certain unit owners under subsection (b) of section 76-845, subsection (a) of section 76-849, subsection (b) of section 76-850, or subsection (b) of section 76-855, and except as limited by subsection (d) of this section, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger majority the declaration specifies up to eighty percent of the votes in the association exclusive of the declarant. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located and is effective only upon recordation.

(d) Except to the extent expressly permitted or required by other provisions of the Nebraska Condominium Act, no amendment may create or increase special declarant rights, increase the number of units, or change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted in the absence of the unanimous consent of the unit owners. In addition, no amendment may change the boundaries of any unit, increase the allocated interests of any unit, or change the uses to which any unit is restricted, without the consent of the owner of the unit.

(e) Amendments to the declaration required by the act to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

Source: Laws 1983, LB 433, § 30; Laws 1984, LB 1105, § 5; Laws 1993, LB 478, § 15; Laws 2020, LB808, § 43.

76-857 Corporation, unincorporated association, master association, executive board; powers authorized.

(a) If the declaration for a condominium provides that any of the powers described in section 76-860 are to be exercised by or may be delegated to a profit or nonprofit corporation, or unincorporated association, which exercises those or other powers on behalf of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of the Nebraska Condominium Act applicable to unit owners associations apply to any such corporation or unincorporated association, except as modified by this section. However, in no case shall the declaration provide that the power to institute or intervene as a plaintiff in litigation or administrative proceedings, other than litigation or administrative proceedings to enforce covenants, by-laws, or rules against unit owners or the unit owners association, be delegated to or exercised by any party other than the unit owners or the declarant.

(b) Unless a master association is acting in the capacity of an association described in section 76-859, it may exercise the powers set forth in subdivision (a)(2) of section 76-860 only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(c) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners association set forth in sections 76-861, 76-866 to 76-868, and 76-870 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of the act.

(e) Notwithstanding the provisions of subsection (f) of section 76-861 with respect to the election of the executive board of an association, by all unit owners after the period of declarant control ends, and even if a master association is also an association described in section 76-859, the articles of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all condominiums subject to the master association may elect all members of that executive board.

(2) All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board.

(3) All unit owners of each condominium subject to the master association may elect specified members of that executive board.

(4) All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.

Source: Laws 1983, LB 433, § 33; Laws 1984, LB 1105, § 6; Laws 2020, LB808, § 44.

MANAGEMENT OF CONDOMINIUM

76-859 Unit owners association; organization.

A unit owners association must be organized no later than the date the units in the condominium equal to one-half of the total number of units plus one are conveyed. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 76-855 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

Source: Laws 1983, LB 433, § 35; Laws 2020, LB808, § 45.

76-860 Unit owners association; powers.

(a) Except as provided in subsection (b) of this section and subject to the provisions of the declaration, the association, even if unincorporated, may:

(1) Adopt and amend bylaws and rules and regulations;

(2) Adopt and amend budgets for revenue, expenditures, and reserves and collect assessments for common expenses from unit owners;

(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute or intervene as a plaintiff in litigation or administrative proceedings, other than litigation or administrative proceedings to enforce covenants, bylaws, or rules against unit owners or the unit owners association, in its own name on behalf of itself or two or more unit owners on matters affecting the condominium upon the affirmative vote of at least eighty percent of the votes in the association exclusive of the declarant;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be encumbered, conveyed, or subjected to a security interest only pursuant to section 76-870;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in subdivisions (2) and (4) of section 76-839, and for services provided to unit owners;

(11) Impose charges for late payment of assessments and, after notice and opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations for the association;

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale statements required by section 76-884, or statements of unpaid assessments;

(13) Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(15) Exercise any other powers conferred by the declaration or bylaws;

(16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association; and

(17) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

Source: Laws 1983, LB 433, § 36; Laws 1984, LB 1105, § 7; Laws 2020, LB808, § 46.

76-861 Executive board; members and officers; powers and duties; condominium statement; filing with register of deeds.

(a) Except as provided in the declaration, the bylaws, subsection (b) of this section, or other provisions of the Nebraska Condominium Act, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are required to exercise ordinary and reasonable care.

(b) The executive board may not act on behalf of the association to commence litigation on behalf of the unit owners or the unit owners association, to amend the declaration pursuant to section 76-854, to terminate the condominium pursuant to section 76-855, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members pursuant to subsection (f) of this section, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(c) Within thirty days after adoption of any proposed budget for the condominium, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all votes in the association or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(d) Subject to subsection (e) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him or her, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of ninety percent of the units which may be created to unit owners other than a declarant; or (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business.

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he or she may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective. Successor boards following declarant control may not discriminate nor act arbitrarily with respect to units still owned by a declarant or a successor declarant.

(e) Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the executive board shall be elected exclusively by unit owners other than the declarant.

(f) Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

(g) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

(h) The association shall file with the register of deeds of the county in which the condominium is located a condominium statement listing the name of the association and the names and addresses of the current officers of the association. Such filing shall be made every year on or before December 31. The receipt of any legal notice by or service of process on such officer personally or at such officer's filed address shall constitute notice to the association. If the association fails to make the filing required by this subsection, the posting of the legal notice or process at the entrance, main office, or other prominent location in the common area of the condominium shall constitute notice to the association until such filing is made.

Source: Laws 1983, LB 433, § 37; Laws 2019, LB42, § 3; Laws 2020, LB808, § 47.

76-867 Quorums.

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast thirty-five percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.

Source: Laws 1983, LB 433, § 43; Laws 2020, LB808, § 48.

76-869 Tort and contract liability.

(a) Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium

which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner only for costs the association would not have incurred but for a breach of contract or other negligent act or omission by the declarant. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 76-875.

(b) The declarant shall not be liable for any action, loss, or cost pursuant to this section if at the time the loss occurred, insurance required by section 76-871 was in place.

Source: Laws 1983, LB 433, § 45; Laws 2020, LB808, § 49.

76-870 Encumbrance or conveyance of common elements; procedure.

(a) Portions of the common elements may be encumbered or conveyed or otherwise subjected to a security interest by the association if persons entitled to cast at least sixty-seven percent of the votes in the association, including sixty-seven percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree to encumber or convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

(b) An agreement to encumber or convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may contract to encumber or convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (a) and (b) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(d) Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(e) A conveyance or an encumbrance of common elements pursuant to this section does not deprive any unit of its rights of access and support.

(f) Unless the declaration otherwise provides, a conveyance or an encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

Source: Laws 1983, LB 433, § 46; Laws 1984, LB 1105, § 11; Laws 2020, LB808, § 50.

PROTECTION OF CONDOMINIUM PURCHASERS

76-884 Resale of unit; information required.

(a) Except in the case of a sale where delivery of a public-offering statement is required or unless exempt under subsection (b) of section 76-878, the unit owner and any other person in the business of selling real estate who offers a unit to a purchaser shall furnish to a purchaser before conveyance a copy of the declaration other than the plats and plans, the bylaws, the rules or regulations of the association, and the following information:

(1) a statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(2) any other fees payable by unit owners;

(3) the most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(4) the current operating budget of the association, if any;

(5) a statement that a copy of any insurance policy provided for the benefit of unit owners is available from the association upon request;

(6) a statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof; and

(7) a disclosure of any threatened or pending litigation involving the unit or the association.

(b) The association, within ten days after a request by a unit owner, shall furnish in writing the information necessary to enable the unit owner to comply with this section. A unit owner providing information pursuant to subsection (a) of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate.

(c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the information prepared by the association. The unit owner or any other person in the business of selling real estate who offers a unit to a purchaser is not liable to a purchaser for the failure or delay of the association to provide such information in a timely manner.

Source: Laws 1983, LB 433, § 60; Laws 1984, LB 1105, § 18; Laws 2020, LB808, § 51.

76-890 Warranties; statute of limitations; judicial proceedings; notice; effect; strict compliance; required.

(a) A judicial proceeding for breach of any obligation arising under section 76-887 or 76-888 must be commenced within two years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than one year. With respect to a unit that may be occupied for residential use, an agreement to reduce the period of limitation must be evidenced by an instrument executed by the purchaser. Prior to commencing any judicial proceeding under this section, the person seeking to commence the judicial proceeding must (1) provide written notice of the proposed proceeding and the specific alleged defect or defects to the prospective defendant or defendants and (2) give the prospective defendant or defendants at least three months to cure the alleged defect or defects. If the defect or defects are such

that they cannot reasonably be cured within three months, the cure period shall extend as long as the prospective defendant has commenced and is diligently proceeding with repairs. Providing the notice in this section in a manner reasonably understood to inform the prospective defendant of the specific alleged defect or defects shall toll any applicable statute of limitations until the alleged defect or defects are cured. Any proceeding commenced without strict compliance with this section is subject to dismissal for such noncompliance.

(b) Subject to subsection (c) of this section, a cause of action for breach of warranty, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) as to each common element, at the time the common element is completed or, if later, (i) as to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(c) If a warranty explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

Source: Laws 1983, LB 433, § 66; Laws 1984, LB 1105, § 21; Laws 2020, LB808, § 52.

ARTICLE 10
TRUST DEEDS

Section

76-1011 Sale of trust property; proceeds of sale; disposition.

(1) The trustee shall apply the proceeds of the trustee's sale in the following order of priority:

(a) First, the proceeds shall be applied to the costs and expenses of exercising the power of sale and of the sale, including the payment of the trustee's fees actually incurred not to exceed the amount which may be provided for in the trust deed;

(b) Second, the proceeds shall be applied to payment of the obligation secured by the trust deed;

(c) Third, the proceeds shall be applied to the payment of junior trust deeds, mortgages, or other lienholders; and

(d) Fourth, the balance of the proceeds, if any, shall be applied to the person or persons legally entitled to any remaining proceeds.

(2) Whether the proceeds are disbursed by the trustee pursuant to subsection (1) of this section or pursuant to an action described in section 76-1011.01, the payment of any attorney's fees and costs incurred by the trustee in connection with the distribution of the proceeds of the trustee's sale shall be deducted from the proceeds prior to the payment of junior trust deeds, mortgages, or other lien holders, or to any other person or persons legally entitled thereto.

Source: Laws 1965, c. 451, § 11, p. 1430; Laws 1984, LB 679, § 22; Laws 2021, LB503, § 2.

76-1011.01 Sale of trust property; proceeds of sale; disposition; objecting party; attorney's fees and costs.

If a court enters a judgment in favor of the holder of a trust deed, mortgage, or other lien in any interpleader action, action for declaratory judgment, or any other similar action resulting from an objection to or the uncertainty of the proposed payment of proceeds of the trustee's sale by the trustee to such holders of trust deeds, mortgages, or other liens, the court shall order the objecting party or parties who, without a good-faith reason, objected to the proposed payment of proceeds of the trustee's sale by the trustee, to pay the reasonable attorney's fees and court costs of any such holder.

Source: Laws 2021, LB503, § 1.

76-1018 Act, how cited.

Sections 76-1001 to 76-1018 shall be known and may be cited as Nebraska Trust Deeds Act.

Source: Laws 1965, c. 451, § 17, p. 1433; Laws 1994, LB 1275, § 8; Laws 2021, LB503, § 3.

ARTICLE 14

LANDLORD AND TENANT

(a) UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

(b) MOBILE HOME LANDLORD AND TENANT ACT

(a) UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

76-1401 Act, how cited.

Sections 76-1401 to 76-1449 shall be known and may be cited as the Uniform Residential Landlord and Tenant Act.

Source: Laws 1974, LB 293, § 1; Laws 1991, LB 324, § 1; Laws 2021, LB320, § 2.

76-1410 Terms, defined.

Subject to additional definitions contained in the Uniform Residential Landlord and Tenant Act and unless the context otherwise requires:

(1) Act of domestic violence means abuse as defined in section 42-903, sexual assault under sections 28-319 to 28-320.01, domestic assault under section 28-323, stalking under section 28-311.03, labor or sex trafficking under section 28-831, and knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult under section 28-386.

(2) Action includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(3) Building and housing codes include any law, ordinance, or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use, or appearance of any premises, or dwelling unit. Minimum housing code shall be limited to those laws, resolutions, or ordinances or regulations, or portions thereof, dealing specifically with health and minimum standards of fitness for habitation.

(4) Dwelling unit means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(5) Good faith means honesty in fact in the conduct of the transaction concerned.

(6) Household member means a child or adult, other than the perpetrator of an act of domestic violence, who resides with a tenant.

(7) Landlord means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to disclose as required by section 76-1417.

(8) Organization includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(9) Owner means one or more persons, jointly or severally, in whom is vested (a) all or part of the legal title to property, or (b) all or part of the beneficial ownership and a right to present use and enjoyment of the premises; and the term includes a mortgagee in possession.

(10) Person includes an individual, limited liability company, or organization.

(11) Qualified third party means an organization that (a) is a nonprofit organization organized under section 501(c)(3) of the Internal Revenue Code or a federally recognized Indian tribe whose governmental body is within the borders of Nebraska and (b) has an affiliation agreement with the Department of Health and Human Services to provide services to victims of domestic violence and sexual assault under the Protection from Domestic Abuse Act.

(12) Premises means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant.

(13) Rent means all payments to be made to the landlord under the rental agreement.

(14) Rental agreement means all agreements, written or oral, between a landlord and tenant, and valid rules and regulations adopted under section 76-1422 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15) Roomer means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling units. Major facility in the case of a bathroom means toilet, or either a bath or shower, and in the case of a kitchen means refrigerator, stove, or sink.

(16) Single-family residence means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.

(17) Tenant means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Source: Laws 1974, LB 293, § 10; Laws 1993, LB 121, § 484; Laws 2021, LB320, § 3.

Cross References

Protection from Domestic Abuse Act, see section 42-901.

76-1416 Security deposits; prepaid rent.

(1) A landlord may not demand or receive security, however denominated, in an amount or value in excess of one month's periodic rent, except that a pet deposit not in excess of one-fourth of one month's periodic rent may be demanded or received when appropriate, but this subsection shall not be applicable to housing agencies organized or existing under the Nebraska Housing Agency Act.

(2) Upon termination of the tenancy, property or money held by the landlord as prepaid rent and security may be applied to the payment of rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with the rental agreement or section 76-1421. The balance, if any, and a written itemization shall be delivered or mailed to the tenant within fourteen days after the date of termination of the tenancy. If no mailing address or instructions are provided by the tenant to the landlord, the landlord shall mail, by first-class mail, the balance of the security deposit to be returned, if any, and a written itemization of the amount of the security deposit not returned to the tenant's last-known mailing address. If the mailing is returned as undeliverable, or if the returned balance of the security deposit remains outstanding for one year, it shall be considered abandoned property to be reported and paid to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act.

(3) If the landlord fails to comply with subsection (2) of this section, the tenant may recover the property and money due him or her, court costs, and reasonable attorney's fees. In addition, if the landlord's failure to comply with subsection (2) of this section is willful and not in good faith, the tenant may recover an amount equal to one month's periodic rent or two times the amount of the security deposit, whichever is less, as liquidated damages.

(4) This section does not preclude the landlord or tenant from recovering other damages to which he or she may be entitled under the Uniform Residential Landlord and Tenant Act. However, a tenant shall not be liable for damages directly related to the tenant's removal from the premises by order of any governmental entity as a result of the premises not being fit for habitation due to the negligence or neglect of the landlord.

(5) The holder of the landlord's interest in the premises at the time of the termination of the tenancy is bound by this section.

Source: Laws 1974, LB 293, § 16; Laws 1999, LB 105, § 99; Laws 2001, LB 7, § 12; Laws 2019, LB433, § 1; Laws 2021, LB532, § 7.

Cross References

Nebraska Housing Agency Act, see section 71-1572.
Uniform Disposition of Unclaimed Property Act, see section 69-1329.

76-1423 Access.

(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall:

(a) Give the tenant at least twenty-four hours' written notice of the landlord's intent to enter. Such notice shall be provided to each individual unit and include the intended purpose for entry and a reasonable period during which the landlord anticipates making entry; and

(b) Enter only at reasonable times.

(4) The landlord has no other right of access except by court order, as permitted by subsection (2) of section 76-1432, or if the tenant has abandoned or surrendered the premises.

Source: Laws 1974, LB 293, § 23; Laws 2021, LB320, § 4.

76-1431 Noncompliance; failure to pay rent; effect; violent criminal activity upon premises; landlord; powers; exceptions.

(1) Except as provided in the Uniform Residential Landlord and Tenant Act, if there is a noncompliance with section 76-1421 materially affecting health and safety or a material noncompliance by the tenant with the rental agreement or any separate agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of

the notice if the breach is not remedied in fourteen days, and the rental agreement shall terminate as provided in the notice subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six months, the landlord may terminate the rental agreement upon at least fourteen days' written notice specifying the breach and the date of termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within seven calendar days after written notice by the landlord of nonpayment and his or her intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(3) Except as provided in the Uniform Residential Landlord and Tenant Act, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or section 76-1421. If the tenant's noncompliance is willful, the landlord may recover reasonable attorney's fees.

(4) Notwithstanding subsections (1) and (2) of this section or section 25-21,221, and except as provided in subsection (5) of this section, a landlord may, after five days' written notice of termination of the rental agreement and without the right of the tenant to cure the default, file suit and have judgment against any tenant or occupant for recovery of possession of the premises if the tenant, occupant, member of the tenant's household, guest, or other person who is under the tenant's control or who is present upon the premises with the tenant's consent, engages in any violent criminal activity on the premises, the illegal sale of any controlled substance on the premises, or any other activity that threatens the health or safety of other tenants, the landlord, or the landlord's employees or agents. Such activity shall include, but not be limited to, any of the following activities of the tenant, occupant, member of the tenant's household, guest, or other person who is under the tenant's control or who is present upon the premises with the tenant's consent: (a) Physical assault or the threat of physical assault; (b) illegal use of a firearm or other weapon or the threat of illegal use of a firearm or other weapon; (c) possession of a controlled substance if the tenant knew or should have known of the possession, unless such controlled substance was obtained directly from or pursuant to a medical order issued by a practitioner legally authorized to prescribe while acting in the course of his or her professional practice; or (d) any other activity or threatened activity which would otherwise threaten the health or safety of any person or involving threatened, imminent, or actual damage to the property.

(5)(a) A landlord shall not take action under subsection (4) of this section if the violent criminal activity, illegal sale of any controlled substance, or other activity that threatens the health or safety of other tenants, the landlord, or the landlord's employees or agents, as set forth in subsection (4) of this section, is conducted by a person on the premises other than the tenant or a household member and the tenant or household member takes at least one of the following measures:

(i) The tenant or household member seeks a protective order, restraining order, or other similar relief which would apply to the person conducting such activity;

(ii) The tenant or household member reports such activity to a law enforcement agency in an effort to initiate a criminal action against the person conducting the activity; or

(iii) If the activity is an act of domestic violence, the tenant or household member receives certification of the activity from a qualified third party as set forth in the housing protection provisions of the federal Violence Against Women Reauthorization Act of 2013.

(b) This subsection shall not apply to a tenant who is a perpetrator of an act of domestic violence. If both the victim who takes measures under this subsection and perpetrator of an act of domestic violence are parties to a rental agreement, a landlord shall only take action under subsection (4) of this section against the perpetrator.

Source: Laws 1974, LB 293, § 31; Laws 2001, LB 7, § 18; Laws 2016, LB221, § 4; Laws 2019, LB433, § 2; Laws 2021, LB320, § 5.

76-1431.01 Tenant; victim of an act of domestic violence; release from rental agreement; conditions; effect.

(1) A tenant who is a victim of an act of domestic violence or whose household member is a victim of an act of domestic violence may obtain a release from a rental agreement if the tenant or household member has:

(a) Obtained a protective order, restraining order, or other similar relief which applies to the perpetrator of the act of domestic violence; or

(b) Obtained certification confirming domestic violence as set forth in subdivision (5)(a)(iii) of section 76-1431.

(2) To obtain a release from a rental agreement under this section, the tenant shall:

(a) Provide to the landlord a copy of the documentation described in subsection (1) of this section; and

(b) Provide to the landlord a written notice containing:

(i) The date on which the tenant wishes the release to be effective. Such date shall be at least fourteen days after the date the tenant provides the documentation and written notice and no more than thirty days after such date; and

(ii) The names of any household members to be released in addition to the tenant.

(3) The tenant shall remain liable for rent for the month in which the tenant terminated the rental agreement.

(4) A tenant and any household member who is released from a rental agreement pursuant to this section:

(a) Are not liable for rent or damages to the premises incurred after the release date; and

(b) Are not subject to any fee solely because of termination of the rental agreement.

(5) Other tenants who are parties to the rental agreement, other than household members of a tenant released under this section, are not released

pursuant to this section from their obligations under the rental agreement or the Uniform Residential Landlord and Tenant Act.

(6) A tenant who is a perpetrator of an act of domestic violence may not obtain a release from a rental agreement under this section.

Source: Laws 2021, LB320, § 6.

76-1441 Complaint for restitution; filing; contents.

(1) The person seeking possession shall file a complaint for restitution with the clerk of the district or county court. The complaint shall contain (a) the specific statutory authority under which possession is sought; (b) the facts, with particularity, on which he or she seeks to recover; (c) a reasonably accurate description of the premises; and (d) the requisite compliance with the notice provisions of the Uniform Residential Landlord and Tenant Act. The complaint may notify the tenant that personal property remains on the premises and that it may be disposed of pursuant to section 69-2308 or subsection (5) of section 76-1414. The complaint may also contain other causes of action relating to the tenancy, but such causes of action shall be answered and tried separately, if requested by either party in writing.

(2) The person seeking possession pursuant to subsection (4) of section 76-1431 shall include in the complaint the incident or incidents giving rise to the suit for recovery of possession.

Source: Laws 1974, LB 293, § 41; Laws 1984, LB 13, § 85; Laws 1995, LB 175, § 2; Laws 2002, LB 876, § 81; Laws 2016, LB221, § 5; Laws 2021, LB320, § 7.

76-1442.01 Summons; alternative method of service; affidavit; contents.

When authorized by section 76-1442, service of a summons issued under such section may be made by posting a copy on the front door of the dwelling unit and mailing a copy by first-class mail to the defendant's last-known address. The plaintiff shall file an affidavit with the court describing the diligent efforts made to serve the summons in the manner provided in sections 25-505.01 to 25-516.01, the reasons why such service was unsuccessful, and that service was made by posting the summons on the front door of the dwelling unit and mailing a copy by first-class mail to the defendant's last-known address.

Source: Laws 1991, LB 324, § 4; Laws 2021, LB320, § 8.

76-1443 Continuance; when.

The court may grant a continuance for good cause shown by either party, but no subsequent continuance shall be granted except by agreement or unless extraordinary cause be shown to the court. For any subsequent continuance extending the initial trial date into the next periodic rental period, the court may require a tenant to deposit with the clerk of the court such rental payments as accrue during the pendency of the suit.

Source: Laws 1974, LB 293, § 43; Laws 2021, LB320, § 9.

(b) MOBILE HOME LANDLORD AND TENANT ACT

76-1485 Rental deposit; return; withholdings; considered abandoned property; when.

(1) A landlord shall, within fourteen days from the date of termination of the tenancy, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding all or any portion of the rental deposit. If no mailing address or delivery instructions are provided by the tenant to the landlord, the landlord shall mail, by first-class mail, the balance of the rental deposit to be returned, if any, and the written statement regarding any amounts withheld to the tenant's last-known mailing address. If the mailing is returned as undeliverable, or if the returned balance of the rental deposit remains outstanding for one year, it shall be considered abandoned property to be reported to the State Treasurer in accordance with the Uniform Disposition of Unclaimed Property Act. The landlord may withhold from the rental deposit only such amounts as are reasonable:

(a) To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement; and

(b) To restore the mobile home space to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

(2) In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

Source: Laws 1984, LB 916, § 36; Laws 2021, LB320, § 10.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

76-1486 Rental deposit; failure to provide written statement; effect.

A landlord who fails to provide a written statement as required by section 76-1485 shall forfeit all rights to withhold any portion of the rental deposit.

Source: Laws 1984, LB 916, § 37; Laws 2021, LB320, § 11.

76-1489 Rental deposit; unlawful retention; damages.

If a landlord retains all or any portion of a rental deposit in violation of sections 76-1483 to 76-1488, the tenant may recover the amount of the rental deposit due to the tenant, court costs, and reasonable attorney's fees. In addition, if the landlord's retention of the rental deposit or any portion thereof is willful and not in good faith, the tenant may recover an amount equal to one month's periodic rent or two times the amount of the rental deposit, whichever is less, as liquidated damages.

Source: Laws 1984, LB 916, § 40; Laws 2021, LB320, § 12.

76-14,101 Noncompliance by tenant; landlord's rights.

(1) If there is a noncompliance with section 76-1493 materially affecting health and safety or a material noncompliance by the tenant with the rental agreement, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice. Only in the event the breach is remediable by repairs or the payment of damages and the tenant adequately remedies the breach or takes reasonable steps to remedy it prior to the date specified in the notice, the rental agreement shall not terminate.

(2) If rent is unpaid when due and the tenant fails to pay rent within seven days after written notice by the landlord of nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement.

(3) A landlord may recover damages, obtain injunctive relief, or recover possession of the mobile home space by an action in forcible detainer for any material noncompliance by the tenant with the rental agreement or section 76-1493 by bringing an action for possession in the manner described in sections 76-1440 to 76-1447.

(4) The remedy provided in subsection (3) of this section shall be in addition to any right of a landlord arising under subsection (1) of this section.

Source: Laws 1984, LB 916, § 52; Laws 2021, LB320, § 13.

ARTICLE 15

AGRICULTURAL LANDS, SPECIAL PROVISIONS

(d) REPORTS ON FARMING OR RANCHING

Section
76-1522. Repealed. Laws 2020, LB910, § 49.

(d) REPORTS ON FARMING OR RANCHING

76-1522 Repealed. Laws 2020, LB910, § 49.

ARTICLE 22

REAL PROPERTY APPRAISER ACT

Section
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Section

76-2201 Act, how cited.

Sections 76-2201 to 76-2250 shall be known and may be cited as the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 1; Laws 1991, LB 203, § 6; Laws 1994, LB 1107, § 6; Laws 1999, LB 618, § 1; Laws 2001, LB 162, § 1; Laws 2006, LB 778, § 13; Laws 2014, LB717, § 1; Laws 2015, LB139, § 1; Laws 2016, LB729, § 1; Laws 2018, LB741, § 1; Laws 2022, LB707, § 47.
Operative date April 19, 2022.

76-2202 Legislative findings.

The Legislature finds that as a result of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Nebraska's laws providing for regulation of real property appraisers require restructuring and updating in order to comply with such acts. Compliance with the acts is necessary to ensure an adequate number of real property appraisers in Nebraska to conduct appraisals of real estate involved in federally related transactions as defined in such acts.

Source: Laws 1990, LB 1153, § 2; Laws 1991, LB 203, § 7; Laws 1994, LB 1107, § 7; Laws 2006, LB 778, § 14; Laws 2010, LB931, § 1;

Laws 2012, LB714, § 1; Laws 2014, LB717, § 2; Laws 2015, LB139, § 2; Laws 2016, LB731, § 1; Laws 2018, LB741, § 2; Laws 2020, LB808, § 53.

76-2203 Definitions, where found.

For purposes of the Real Property Appraiser Act, the definitions found in sections 76-2203.01 to 76-2219.02 shall be used.

Source: Laws 1990, LB 1153, § 3; Laws 1991, LB 203, § 8; Laws 1994, LB 1107, § 8; Laws 1999, LB 618, § 2; Laws 2001, LB 162, § 2; Laws 2006, LB 778, § 15; Laws 2014, LB717, § 3; Laws 2015, LB139, § 3; Laws 2018, LB741, § 3; Laws 2022, LB707, § 48. Operative date April 19, 2022.

76-2203.01 Accredited degree-awarding community college, college, or university, defined.

Accredited degree-awarding community college, college, or university means an institution that is approved or accredited by an accreditation association or agency recognized by the United States Secretary of Education.

Source: Laws 2014, LB717, § 4; Laws 2021, LB528, § 17.

76-2204 Appraisal, defined.

Appraisal means (1) as a noun, an opinion of value or the act or process of developing an opinion of value or (2) as an adjective, pertaining to appraising and related functions such as real property appraisal practice. An appraisal is numerically expressed as a specific amount, as a range of numbers, or as a relationship to a previous value opinion or numerical benchmark.

Source: Laws 1990, LB 1153, § 4; Laws 2001, LB 162, § 3; Laws 2006, LB 778, § 16; Laws 2015, LB139, § 4; Laws 2020, LB808, § 54.

76-2205.01 Repealed. Laws 2020, LB808, § 101.

76-2205.02 Appraisal review, defined.

Appraisal review means (1) as a noun, the act or process of developing an opinion about the quality of a real property appraiser's work that was performed as part of real property appraisal practice or (2) as an adjective, of or pertaining to an opinion about the quality of another real property appraiser's work that was performed as part of real property appraisal practice.

Source: Laws 2015, LB139, § 7; Laws 2018, LB741, § 4; Laws 2020, LB808, § 55.

76-2207.01 Assignment, defined.

Assignment means a valuation service that is performed by a real property appraiser as a consequence of an agreement with a client.

Source: Laws 2015, LB139, § 9; Laws 2018, LB741, § 5; Laws 2020, LB808, § 56.

76-2207.17 Assignment results, defined.

Assignment results means the opinions or conclusions, not limited to value, developed by a real property appraiser when performing valuation services specific to real property appraisal practice.

Source: Laws 2018, LB741, § 6; Laws 2020, LB808, § 57.

76-2207.22 Client, defined.

Client means the person or persons who engage a real property appraiser by employment or contract in a specific assignment whether directly or through an agent.

Source: Laws 2015, LB139, § 14; R.S.Supp.,2016, § 76-2207.06; Laws 2018, LB741, § 11; Laws 2020, LB808, § 58.

76-2207.23 Completed application, defined.

Completed application means an application for credentialing has been processed, all statutory requirements for a credential to be issued have been met by the applicant, and all required documentation is submitted to the board for final consideration.

Source: Laws 2014, LB717, § 5; R.S.Supp.,2014, § 76-2210.03; Laws 2015, LB139, § 15; R.S.Supp.,2016, § 76-2207.07; Laws 2018, LB741, § 12; Laws 2022, LB707, § 49.
Operative date April 19, 2022.

76-2207.26 Credential holder, defined.

Credential holder means (1) any person who holds a valid credential as a trainee real property appraiser, licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser and (2) any person who holds a temporary credential to engage in real property appraisal practice within this state.

Source: Laws 2015, LB139, § 18; R.S.Supp.,2016, § 76-2207.10; Laws 2018, LB741, § 15; Laws 2020, LB808, § 59.

76-2207.27 Education provider, defined.

Education provider means: Any real property appraisal or real-estate-related organization; proprietary school; accredited degree-awarding community college, college, or university; state or federal agency; or such other provider that may be approved by the board that provides real property appraiser training or education.

Source: Laws 2015, LB139, § 19; R.S.Supp.,2016, § 76-2207.11; Laws 2018, LB741, § 16; Laws 2019, LB77, § 1; Laws 2020, LB808, § 60.

76-2207.30 Financial Institutions Reform, Recovery, and Enforcement Act of 1989, defined.

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 means the act as it existed on January 1, 2022.

Source: Laws 2014, LB717, § 8; R.S.Supp.,2014, § 76-2212.02; Laws 2015, LB139, § 22; Laws 2016, LB731, § 3; R.S.Supp.,2016, § 76-2207.14; Laws 2018, LB741, § 19; Laws 2019, LB77, § 2;

Laws 2020, LB808, § 61; Laws 2021, LB23, § 1; Laws 2022, LB707, § 50.
Operative date April 19, 2022.

76-2212.03 Jurisdiction of practice, defined.

Jurisdiction of practice means any jurisdiction in which an appraiser devotes his or her time engaged in real property appraisal practice.

Source: Laws 2014, LB717, § 9; Laws 2015, LB139, § 25; Laws 2020, LB808, § 62.

76-2213.03 PAREA program, defined.

PAREA program means a practical applications of real estate appraisal program approved by the Appraiser Qualifications Board as prescribed by rules and regulations of the Real Property Appraiser Board.

Source: Laws 2022, LB707, § 51.
Operative date April 19, 2022.

76-2215 Real property appraisal practice, defined.

Real property appraisal practice means any act or process performed by a real property appraiser involved in developing and reporting an analysis, opinion, or conclusion relating to the specified interests in or aspects of identified real estate or real property or an appraisal review. Real property appraisal practice includes, but is not limited to, evaluation assignments, valuation assignments, and appraisal review assignments.

Source: Laws 1990, LB 1153, § 15; Laws 2001, LB 162, § 7; Laws 2006, LB 778, § 33; Laws 2015, LB139, § 29; Laws 2018, LB741, § 22; Laws 2020, LB808, § 63.

76-2216 Real property appraiser, defined.

Real property appraiser means a person who is a credential holder.

Source: Laws 1990, LB 1153, § 16; Laws 2001, LB 162, § 8; Laws 2006, LB 778, § 34; Laws 2010, LB931, § 5; Laws 2015, LB139, § 30; Laws 2020, LB808, § 64.

76-2216.02 Report, defined.

Report means any communication, written, oral, or by electronic means, of assignment results transmitted to the client or a party authorized by the client upon completion of an assignment. Testimony related to assignment results is deemed to be an oral report.

Source: Laws 1990, LB 1153, § 6; Laws 2006, LB 778, § 19; Laws 2010, LB931, § 2; R.S.Supp.,2014, § 76-2206; Laws 2015, LB139, § 32; Laws 2018, LB741, § 23; Laws 2020, LB808, § 65.

76-2216.03 Repealed. Laws 2020, LB808, § 101.

76-2218 Two-year continuing education period, defined.

(1) Except as provided in subsections (2) through (6) of this section, two-year continuing education period means the period of twenty-four months commencing on January 1 and completed on December 31 of the following year.

(2) For a new real property appraiser credentialed prior to July 1 pursuant to section 76-2228.01, 76-2230, 76-2231.01, or 76-2232, two-year continuing education period means the period commencing on the date of initial credentialing and completed on December 31 of the following year.

(3) For a new real property appraiser credentialed on or after July 1 pursuant to section 76-2228.01, 76-2230, 76-2231.01, or 76-2232, two-year continuing education period means the period of twenty-four months commencing on January 1 of the year following the date of initial credentialing.

(4) For a new real property appraiser credentialed pursuant to section 76-2233 who held a valid credential of the same class to engage in real property appraisal practice under the laws of another jurisdiction on January 1 of the year in which the credential was issued by the board, two-year continuing education period means the period of twenty-four months commencing on January 1 of the year in which the credential was issued by the board.

(5) For a new real property appraiser credentialed pursuant to section 76-2233 who (a) did not hold a valid credential of the same class to engage in real property appraisal practice under the laws of another jurisdiction on January 1 of the year in which the credential was issued by the board and (b) was credentialed pursuant to section 76-2233 prior to July 1, two-year continuing education period means the period commencing on the date of initial credentialing and completed on December 31 of the following year.

(6) For a new real property appraiser credentialed pursuant to section 76-2233 who (a) did not hold a valid credential of the same class to engage in real property appraisal practice under the laws of another jurisdiction on January 1 of the year in which the credential was issued by the board and (b) was credentialed pursuant to section 76-2233 on or after July 1, two-year continuing education period means the period of twenty-four months commencing on January 1 of the year following the date of initial credentialing.

Source: Laws 1990, LB 1153, § 18; Laws 1991, LB 203, § 19; Laws 1994, LB 1107, § 15; Laws 2001, LB 162, § 10; Laws 2006, LB 778, § 38; Laws 2015, LB139, § 35; Laws 2022, LB707, § 52.
Operative date April 19, 2022.

76-2218.02 Uniform Standards of Professional Appraisal Practice, defined.

Uniform Standards of Professional Appraisal Practice means the standards adopted and promulgated by The Appraisal Foundation as the standards existed on January 1, 2021.

Source: Laws 2001, LB 162, § 11; R.S.1943, (2003), § 76-2218.01; Laws 2006, LB 778, § 31; Laws 2007, LB186, § 5; Laws 2008, LB1011, § 2; Laws 2010, LB931, § 4; Laws 2012, LB714, § 2; Laws 2014, LB717, § 10; R.S.Supp.,2014, § 76-2213.01; Laws 2015, LB139, § 36; Laws 2016, LB731, § 6; Laws 2018, LB741, § 24; Laws 2020, LB808, § 66; Laws 2021, LB23, § 2.

76-2219.01 Valuation services, defined.

Valuation services means services pertaining to an aspect of property value, including a service performed by real property appraisers.

Source: Laws 2015, LB139, § 38; Laws 2018, LB741, § 25; Laws 2020, LB808, § 67.

76-2219.02 Workfile, defined.

Workfile means data, information, and documentation necessary to support a real property appraiser's opinions and conclusions, and to show compliance with the Uniform Standards of Professional Appraisal Practice.

Source: Laws 2015, LB139, § 39; Laws 2020, LB808, § 68.

76-2220 Proper credentialing required; violation of act; cease and desist order.

(1) Except as provided in section 76-2221, it shall be unlawful for anyone to act as a real property appraiser in this state without first obtaining proper credentialing as required under the Real Property Appraiser Act.

(2) Except as provided in section 76-2221, any person who, directly or indirectly for another, offers, attempts, agrees to engage, or engages in real property appraisal practice, or who advertises or holds himself or herself out to the general public as a real property appraiser, shall be deemed a real property appraiser within the meaning of the Real Property Appraiser Act, and such action shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such person in any action arising out of such act. Committing a single act described in this section by a person required to be credentialed under the Real Property Appraiser Act and not so credentialed shall constitute a violation of the act for which the board may impose sanctions pursuant to this section for the protection of the public health, safety, or welfare.

(3) The board may issue a cease and desist order against any person who violates this section. Such order shall be final ten days after issuance unless such person requests a hearing pursuant to section 76-2240. The board may, through the Attorney General, obtain an order from the district court for the enforcement of the cease and desist order.

Source: Laws 1990, LB 1153, § 20; Laws 1991, LB 203, § 21; Laws 1994, LB 1107, § 16; Laws 2001, LB 162, § 12; Laws 2006, LB 778, § 40; Laws 2015, LB139, § 40; Laws 2018, LB741, § 26; Laws 2020, LB808, § 69.

76-2221 Act; exemptions.

The Real Property Appraiser Act shall not apply to:

(1) Any person who is a salaried employee of (a) the federal government, (b) any agency of the state government or a political subdivision which appraises real estate, (c) any insurance company authorized to do business in this state, or (d) any bank, savings bank, savings and loan association, building and loan association, credit union, or small loan company licensed by this state or supervised or regulated by or through federal enactments covering financial institutions who renders an estimate or opinion of value of real estate or any interest in real estate when such estimate or opinion is rendered in connection with the salaried employee's employment for an entity listed in subdivisions (a) through (d) of this subdivision, except that any salaried employee of the entities listed in subdivisions (a) through (d) of this subdivision who signs a report as a credentialed real property appraiser shall be subject to the act and the Uniform Standards of Professional Appraisal Practice. Any salaried employee of the entities listed in subdivisions (a) through (d) of this subdivision who is a

credentialed real property appraiser and who does not sign a report as a credentialed real property appraiser shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act;

(2) A person referred to in subsection (1) of section 81-885.16;

(3) Any person who provides assistance (a) in obtaining the data upon which assignment results are based, (b) in the physical preparation of a report, such as taking photographs, preparing charts, maps, or graphs, or typing or printing the report, or (c) that does not directly involve the exercise of judgment in arriving at the assignment results set forth in the report;

(4) Any owner of real estate, employee of the owner, or attorney licensed to practice law in this state representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is for the purpose of real estate taxation, or any other person who renders such an estimate or opinion of value when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have;

(5) Any owner of real estate, employee of the owner, or attorney licensed to practice law in this state representing the owner who renders an estimate or opinion of value of real estate or any interest in real estate or damages thereto when such estimate or opinion is offered as testimony in any condemnation proceeding, or any other person who renders such an estimate or opinion when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have;

(6) Any owner of real estate, employee of the owner, or attorney licensed to practice law in this state representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is offered in connection with a legal matter involving real property;

(7) Any person appointed by a county board of equalization to act as a referee pursuant to section 77-1502.01, except that any person who also practices as an independent real property appraiser for others shall be subject to the Real Property Appraiser Act and shall be credentialed prior to engaging in such other real property appraisal practice. Any real property appraiser appointed to act as a referee pursuant to section 77-1502.01 and who prepares a report for the county board of equalization shall not sign such report as a credentialed real property appraiser and shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act;

(8) Any person who is appointed to serve as an appraiser pursuant to section 76-706, except that if such person is a credential holder, he or she shall (a) be subject to the scope of practice applicable to his or her classification of credential and (b) comply with the Uniform Standards of Professional Appraisal Practice, excluding standards 1 through 10; or

(9) Any person, including an independent contractor, retained by a county to assist in the appraisal of real property as performed by the county assessor of such county subject to the standards established by the Tax Commissioner

pursuant to section 77-1301.01. A person so retained shall be under the direction and responsibility of the county assessor.

Source: Laws 1990, LB 1153, § 21; Laws 1991, LB 203, § 22; Laws 1994, LB 1107, § 17; Laws 1999, LB 618, § 5; Laws 2001, LB 162, § 13; Laws 2003, LB 131, § 35; Laws 2005, LB 676, § 1; Laws 2006, LB 778, § 41; Laws 2008, LB1011, § 4; Laws 2010, LB931, § 6; Laws 2015, LB139, § 41; Laws 2016, LB729, § 2; Laws 2016, LB731, § 7; Laws 2018, LB741, § 27; Laws 2020, LB808, § 70; Laws 2021, LB23, § 3; Laws 2022, LB707, § 53.
Operative date April 19, 2022.

76-2222 Real Property Appraiser Board; created; members; terms; compensation; expenses.

(1) The Real Property Appraiser Board is hereby created. The board shall consist of five members. One member who is a certified real property appraiser shall be selected from each of the three congressional districts, and two members shall be selected at large. The two members selected at large shall include one representative of financial institutions and one licensed real estate broker. The Governor shall appoint the members of the board.

(2) The term of each member of the board shall be five years. Upon the expiration of his or her term, a member of the board shall continue to hold office until the appointment and qualification of his or her successor. No person shall serve as a member of the board for consecutive terms. Any vacancy shall be filled in the same manner as the original appointment. The Governor may remove a member for cause.

(3) The members of the board shall elect a chairperson during the first meeting of each year from among the members.

(4) Three members of the board, at least two of whom are real property appraisers, shall constitute a quorum.

(5) Each member of the board shall receive a per diem of one hundred dollars per day (a) for each scheduled meeting of the board or a committee of the board at which the member is present and (b) actually spent in traveling to and from and attending meetings and conferences of the Association of Appraiser Regulatory Officials and its committees and subcommittees or of The Appraisal Foundation and its committees and subcommittees, board committee meetings, or other business as authorized by the board.

(6) Each member of the board shall be reimbursed for expenses incident to the performance of his or her duties under the Real Property Appraiser Act and Nebraska Appraisal Management Company Registration Act as provided in sections 81-1174 to 81-1177.

Source: Laws 1990, LB 1153, § 22; Laws 1991, LB 203, § 23; Laws 1994, LB 1107, § 18; Laws 2001, LB 162, § 14; Laws 2006, LB 778, § 42; Laws 2008, LB1011, § 5; Laws 2015, LB139, § 42; Laws 2016, LB731, § 8; Laws 2018, LB741, § 28; Laws 2019, LB77, § 3; Laws 2020, LB381, § 83.

Cross References

Nebraska Appraisal Management Company Registration Act, see section 76-3201.

76-2223 Real Property Appraiser Board; powers and duties; rules and regulations.

(1) The Real Property Appraiser Board shall administer and enforce the Real Property Appraiser Act and may:

(a) Receive applications for credentialing under the act, process such applications and regulate the issuance of credentials to qualified applicants, and maintain a directory of the names and addresses of persons who receive credentials under the act;

(b) Hold meetings, public hearings, informal conferences, and administrative hearings, prepare or cause to be prepared specifications for all real property appraiser classifications, solicit bids and enter into contracts with one or more testing services, and administer or contract for the administration of examinations approved by the Appraiser Qualifications Board in such places and at such times as deemed appropriate;

(c) Develop the specifications for credentialing examinations, including timing, location, and security necessary to maintain the integrity of the examinations;

(d) Review the procedures and criteria of a contracted testing service to ensure that the testing meets with the approval of the Appraiser Qualifications Board;

(e) Collect all fees required or permitted by the act. The Real Property Appraiser Board shall remit all such receipts to the State Treasurer for credit to the Real Property Appraiser Fund. In addition, the board may collect and transmit to the appropriate federal authority any fees established under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(f) Establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the Real Property Appraiser Act;

(g) Issue subpoenas to compel the attendance of witnesses and the production of books, documents, records, and other papers, administer oaths, and take testimony and require submission of and receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the Real Property Appraiser Board may make application to the district court of Lancaster County to require the attendance and testimony of witnesses and the production of documentary evidence. If any person fails to obey an order of the court, he or she may be punished by the court as for contempt thereof;

(h) Deny an application or censure, suspend, or revoke a credential if it finds that the applicant or credential holder has committed any of the acts or omissions set forth in section 76-2238 or otherwise violated the act. Any disciplinary matter may be resolved through informal disposition pursuant to section 84-913;

(i) Take appropriate disciplinary action against a credential holder if the Real Property Appraiser Board determines that a credential holder has violated any provision of the act or the Uniform Standards of Professional Appraisal Practice;

(j) Enter into consent decrees and issue cease and desist orders upon a determination that a violation of the act has occurred;

(k) Promote research and conduct studies relating to the profession of real property appraisal, sponsor real property appraisal educational activities, and

incur, collect fees for, and pay the necessary expenses in connection with activities which shall be open to all credential holders;

(l) Establish and adopt minimum standards for appraisals as required under section 76-2237;

(m) Adopt and promulgate rules and regulations to carry out the act. The rules and regulations may include provisions establishing minimum standards for education providers, courses, and instructors. The rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedure Act; and

(n) Do all other things necessary to carry out the Real Property Appraiser Act.

(2) The Real Property Appraiser Board shall also administer and enforce the Nebraska Appraisal Management Company Registration Act.

Source: Laws 1990, LB 1153, § 23; Laws 1991, LB 203, § 24; Laws 1994, LB 1107, § 19; Laws 2001, LB 162, § 15; Laws 2006, LB 778, § 43; Laws 2007, LB186, § 8; Laws 2008, LB1011, § 6; Laws 2010, LB931, § 7; Laws 2011, LB410, § 21; Laws 2012, LB714, § 3; Laws 2014, LB717, § 13; Laws 2015, LB139, § 43; Laws 2020, LB808, § 71.

Cross References

Administrative Procedure Act, see section 84-920.
Nebraska Appraisal Management Company Registration Act, see section 76-3201.

76-2227 Credentials; application; requirements.

(1) Applications for initial credentials, upgrade of credentials, credentials through reciprocity, temporary credentials, and renewal of credentials, including authorization to take the appropriate examination, shall be made in writing to the board on forms approved by the board. The payment of the appropriate fee in an amount established by the board pursuant to section 76-2241 shall accompany all applications.

(2) Applications for credentials shall include the applicant's social security number and such other information as the board may require.

(3) At the time of filing an application for a credential, the applicant shall sign a pledge that he or she has read and will comply with the Uniform Standards of Professional Appraisal Practice. Each applicant shall also certify that he or she understands the types of misconduct for which disciplinary proceedings may be initiated.

(4) To qualify for an initial credential, an upgrade of a credential, a credential through reciprocity, a temporary credential, or a renewal of a credential, an applicant shall:

(a) Certify that disciplinary proceedings are not pending against him or her in any jurisdiction or state the nature of any pending disciplinary proceedings;

(b) Certify that he or she has not surrendered an appraiser credential, or any other registration, license, or certification, issued by any other regulatory agency or held in any other jurisdiction, in lieu of disciplinary action pending or threatened within the five-year period immediately preceding the date of application;

(c) Certify that his or her appraiser credential, or any other registration, license, or certification, issued by any other regulatory agency or held in any

other jurisdiction, has not been revoked or suspended within the five-year period immediately preceding the date of application;

(d) Not have been convicted of, including a conviction based upon a plea of guilty or nolo contendere:

(i) Any felony or, if so convicted, has had his or her civil rights restored;

(ii) Any crime of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or in the making of an appraisal within the five-year period immediately preceding the date of application; or

(iii) Any other crime which is related to the qualifications, functions, or duties of a real property appraiser within the five-year period immediately preceding the date of application;

(e) Certify that no civil judicial actions, including dismissal with settlement, in connection with real estate, financial services, or in the making of an appraisal have been brought against him or her within the five-year period immediately preceding the date of application;

(f) Demonstrate character and general fitness such as to command the confidence and trust of the public; and

(g) Not possess a background that would call into question public trust or a credential holder's fitness for credentialing.

(5) Credentials shall be issued only to persons who have a good reputation for honesty, trustworthiness, integrity, and competence to perform real property appraisal practice assignments in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualification has been presented to the board upon request and a completed application has been approved.

(6) No credential shall be issued to a person other than an individual.

Source: Laws 1990, LB 1153, § 27; Laws 1991, LB 203, § 28; Laws 1993, LB 121, § 490; Laws 1994, LB 1107, § 23; Laws 2001, LB 162, § 18; Laws 2006, LB 778, § 47; Laws 2007, LB186, § 10; Laws 2014, LB717, § 14; Laws 2015, LB139, § 44; Laws 2016, LB731, § 9; Laws 2018, LB741, § 29; Laws 2020, LB808, § 72.

76-2228.01 Trainee real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; upgraded credential; requirements; scope of practice.

(1) To qualify for a credential as a trainee real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the Real Property Appraiser Board;

(c)(i) Have successfully completed and passed examination for no fewer than seventy-five class hours in Real Property Appraiser Board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. Each course shall include a proctored, closed-book examination pertinent to the material presented. Except for the fifteen-hour National Uniform Standards

of Professional Appraisal Practice Course, which shall be completed within the two-year period immediately preceding submission of the application, all class hours shall be completed within the five-year period immediately preceding submission of the application; or

(ii) Hold a degree in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum or the equivalent as determined by the Appraiser Qualifications Board. The degree shall be conferred within the five-year period immediately preceding submission of the application. If the degree in real estate or equivalent as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (c)(i) of this subsection;

(d) As prescribed by rules and regulations of the Real Property Appraiser Board, successfully complete a Real Property Appraiser Board-approved supervisory real property appraiser and trainee course within one year immediately preceding the date of application; and

(e) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board.

(2) Prior to engaging in real property appraisal practice, a trainee real property appraiser shall submit a written request for supervisory real property appraiser approval on a form approved by the board. The request for supervisory real property appraiser approval may be made at the time of application or any time after approval as a trainee real property appraiser.

(3) To qualify for an upgraded credential, a trainee real property appraiser shall satisfy the appropriate requirements as follows:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(b) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board for an upgraded credential, pass an appropriate examination approved by the Appraiser Qualifications Board for that upgraded credential, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(4) To qualify for a credential as a licensed residential real property appraiser, a trainee real property appraiser shall:

(a) Successfully complete and pass proctored, closed-book examinations for no fewer than seventy-five additional class hours in board-approved qualifying

education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(c)(ii) of section 76-2230; and

(b) Meet the experience requirements pursuant to subdivision (1)(d) of section 76-2230.

(5) To qualify for a credential as a certified residential real property appraiser, a trainee real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2231.01;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than one hundred twenty-five additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2231.01; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2231.01.

(6) To qualify for a credential as a certified general real property appraiser, a trainee real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2232;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than two hundred twenty-five additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2232; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2232.

(7) The scope of practice for the trainee real property appraiser shall be limited to real property appraisal practice assignments that the supervisory certified real property appraiser is permitted to engage in by his or her current credential and that the supervisory real property appraiser is competent to engage in.

Source: Laws 2006, LB 778, § 49; Laws 2007, LB186, § 12; Laws 2010, LB931, § 10; Laws 2012, LB714, § 4; Laws 2014, LB717, § 15; Laws 2015, LB139, § 47; Laws 2016, LB731, § 11; Laws 2019, LB77, § 4; Laws 2020, LB808, § 73; Laws 2021, LB23, § 4.

76-2228.02 Trainee real property appraiser; direct supervision; supervisory real property appraiser; qualifications; disciplinary action; effect; appraisal experience log.

(1) Each trainee real property appraiser's experience shall be subject to direct supervision by a supervisory real property appraiser. To qualify as a supervisory real property appraiser, a real property appraiser shall:

(a) Be a certified residential real property appraiser or certified general real property appraiser in good standing;

(b) Have held a certified real property appraiser credential in this state, or the equivalent in any other jurisdiction, for a minimum of three years immediately preceding the date of the written request for approval as supervisory real property appraiser;

(c) Have not successfully completed disciplinary action by the board or any other jurisdiction, which action limited the real property appraiser's legal eligibility to engage in real property appraisal practice within three years immediately preceding the date the written request for approval as supervisory real property appraiser is submitted by the applicant or trainee real property appraiser on a form approved by the board;

(d) As prescribed by rules and regulations of the board, have successfully completed a board-approved supervisory real property appraiser and trainee course preceding the date the written request for approval as supervisory real property appraiser is submitted by the applicant or trainee real property appraiser on a form approved by the board; and

(e) Certify that he or she understands his or her responsibilities and obligations under the Real Property Appraiser Act as a supervisory real property appraiser and applies his or her signature to the written request for approval as supervisory real property appraiser submitted by the applicant or trainee real property appraiser.

(2) The supervisory real property appraiser shall be responsible for the training and direct supervision of the trainee real property appraiser's experience by:

(a) Accepting responsibility for the report by applying his or her signature and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(b) Reviewing the trainee real property appraiser reports; and

(c) Personally inspecting each appraised property with the trainee real property appraiser as is consistent with his or her scope of practice until the supervisory real property appraiser determines that the trainee real property appraiser is competent in accordance with the competency rule of the Uniform Standards of Professional Appraisal Practice.

(3) A certified real property appraiser disciplined by the board or any other appraiser regulatory agency in another jurisdiction, which discipline may or may not have limited the real property appraiser's legal eligibility to engage in real property appraisal practice, shall not be eligible as a supervisory real property appraiser as of the date disciplinary action was imposed against the appraiser by the board or any other appraiser regulatory agency. The certified real property appraiser shall be considered to be in good standing and eligible as a supervisory real property appraiser upon the successful completion of disciplinary action that does not limit the real property appraiser's legal eligibility to engage in real property appraisal practice, or three years after the successful completion of disciplinary action that limits the real property appraiser's legal eligibility to engage in real property appraisal practice. Any action taken by the board or any other appraiser regulatory agency in another jurisdiction, which may or may not limit the real property appraiser's legal eligibility to engage in real property appraisal practice, involving any jurisdiction's isolated administrative responsibilities including, but not limited to, late payment of fees related to credentialing, failure to timely renew a credential, or

failure to provide notification of a change in contact information, is not disciplinary action for the purpose of this subsection.

(4) The trainee real property appraiser may have more than one supervisory real property appraiser, but a supervisory real property appraiser may not supervise more than three trainee real property appraisers at one time.

(5) As prescribed by rules and regulations of the board, an appraisal experience log shall be maintained jointly by the supervisory real property appraiser and the trainee real property appraiser.

Source: Laws 2014, LB717, § 16; Laws 2015, LB139, § 48; Laws 2018, LB17, § 1; Laws 2019, LB77, § 5; Laws 2020, LB808, § 74; Laws 2021, LB23, § 5.

76-2230 Credential as a licensed residential real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; upgraded credential; requirements; scope of practice.

(1) To qualify for a credential as a licensed residential real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the Real Property Appraiser Board;

(c)(i) Have successfully completed and passed examination for no fewer than one hundred fifty class hours in Real Property Appraiser Board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. Each course shall include a proctored, closed-book examination pertinent to the material presented; or

(ii) Hold a degree in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum or the equivalent as determined by the Appraiser Qualifications Board. If the degree in real estate or equivalent as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (c)(i) of this subsection;

(d)(i) Have no fewer than one thousand hours of experience as prescribed by rules and regulations of the Real Property Appraiser Board. The required experience shall be acceptable to the Real Property Appraiser Board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than six months; or

(ii) Successfully complete a PAREA program. If the PAREA program does not satisfy all required experience for credentialing, the remaining experience hours shall be completed pursuant to subdivision (d)(i) of this subsection;

(e) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the

Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(f) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board, pass a licensed residential real property appraiser examination, certified residential real property appraiser examination, or certified general real property appraiser examination, approved by the Appraiser Qualifications Board, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(2) To qualify for an upgraded credential, a licensed residential real property appraiser shall satisfy the appropriate requirements as follows:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(b) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board for an upgraded credential, pass an appropriate examination approved by the Appraiser Qualifications Board for that upgraded credential, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(3) To qualify for a credential as a certified residential real property appraiser, a licensed residential real property appraiser shall:

(a)(i) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2231.01; or

(ii)(A) Have held a credential as a licensed residential real property appraiser for a minimum of five years; and

(B) Not have been subject to a nonappealable disciplinary action by the board or any other jurisdiction, which action limited the real property appraiser's legal eligibility to engage in real property appraisal practice within five years immediately preceding the date of application for the certified residential real property appraiser credential;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than fifty additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2231.01; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2231.01.

(4) To qualify for a credential as a certified general real property appraiser, a licensed residential real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2232;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than one hundred fifty additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2232; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2232.

(5) An appraiser holding a valid licensed residential real property appraiser credential shall satisfy the requirements for the trainee real property appraiser credential for a downgraded credential.

(6) The scope of practice for a licensed residential real property appraiser shall be limited to real property appraisal practice concerning noncomplex residential real property or real estate having no more than four units, if any, with a transaction value of less than one million dollars and complex residential real property or real estate having no more than four units, if any, with a transaction value of less than four hundred thousand dollars. The appraisal of subdivisions for which a development analysis or appraisal is necessary is not included in the scope of practice for a licensed residential real property appraiser.

Source: Laws 1990, LB 1153, § 30; Laws 1991, LB 203, § 33; Laws 1994, LB 1107, § 28; Laws 1997, LB 29, § 1; Laws 1997, LB 752, § 205; Laws 2001, LB 162, § 22; Laws 2006, LB 778, § 52; Laws 2007, LB186, § 15; Laws 2008, LB1011, § 10; Laws 2010, LB931, § 13; Laws 2012, LB714, § 6; Laws 2014, LB717, § 17; Laws 2015, LB139, § 49; Laws 2016, LB731, § 12; Laws 2019, LB77, § 6; Laws 2020, LB808, § 75; Laws 2021, LB23, § 6; Laws 2022, LB707, § 54.
Operative date April 19, 2022.

76-2231.01 Credential as a certified residential real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; upgraded credential; requirements; scope of practice.

(1) To qualify for a credential as a certified residential real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold a bachelor's degree, or higher, from an accredited degree-awarding college or university;

(ii) Hold an associate's degree from an accredited degree-awarding community college, college, or university in the study of business administration, accounting, finance, economics, or real estate;

(iii) Successfully complete thirty semester hours of college-level education from an accredited degree-awarding community college, college, or university that includes:

(A) Three semester hours in each of the following: English composition; microeconomics; macroeconomics; finance; algebra, geometry, or higher mathematics; statistics; computer science; and business law or real estate law; and

(B) Three semester hours each in two elective courses in any of the topics listed in subdivision (b)(iii)(A) of this subsection, or in accounting, geography, agricultural economics, business management, or real estate;

(iv) Successfully complete thirty semester hours of the College-Level Examination Program that includes:

(A) Three semester hours in each of the following subject matter areas: College algebra; college composition modular; principles of macroeconomics; principles of microeconomics; introductory business law; and information systems; and

(B) Six semester hours in each of the following subject matter areas: College composition; and college mathematics; or

(v) Successfully complete any combination of subdivisions (b)(iii) and (iv) of this subsection that ensures coverage of all topics and hours identified in subdivision (b)(iii) of this subsection;

(c) Have his or her education evaluated for equivalency by one of the following if the college degree is from a foreign country:

(i) An accredited degree-awarding college or university;

(ii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services; or

(iii) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-awarding college or university;

(d)(i) Have successfully completed and passed examination for no fewer than two hundred class hours in Real Property Appraiser Board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. Each course shall include a proctored, closed-book examination pertinent to the material presented; or

(ii) Hold a degree in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum or the equivalent as determined by the Appraiser Qualifications Board. If the degree in real estate or equivalent as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (d)(i) of this subsection;

(e)(i) Have no fewer than one thousand five hundred hours of experience as prescribed by rules and regulations of the Real Property Appraiser Board. The required experience shall be acceptable to the Real Property Appraiser Board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twelve months; or

(ii) Successfully complete a PAREA program. If the PAREA program does not satisfy all required experience for credentialing, the remaining experience hours shall be completed pursuant to subdivision (e)(i) of this subsection;

(f) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for

delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(g) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board, pass a certified residential real property appraiser examination or certified general real property appraiser examination, approved by the Appraiser Qualifications Board, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(2) To qualify for an upgraded credential, a certified residential real property appraiser shall satisfy the following requirements:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(b) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board for an upgrade to a certified general real property appraiser credential, pass a certified general real property appraiser examination approved by the Appraiser Qualifications Board, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(3) To qualify for a credential as a certified general real property appraiser, a certified residential real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivisions (1)(b) and (c) of section 76-2232;

(b) Successfully complete and pass proctored, closed-book examinations for no fewer than one hundred additional class hours in board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the board, or hold a degree in real estate from an accredited degree-awarding college or university or equivalent pursuant to subdivision (1)(d)(ii) of section 76-2232; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2232.

(4) A certified residential real property appraiser shall satisfy the requirements for the trainee real property appraiser credential and licensed residential real property appraiser credential for a downgraded credential. If requested, evidence acceptable to the Real Property Appraiser Board concerning the experience shall be presented along with an application in the form of written reports or file memoranda.

(5) The scope of practice for a certified residential real property appraiser shall be limited to real property appraisal practice concerning residential real property or real estate having no more than four residential units, if any, without regard to transaction value or complexity. The appraisal of subdivisions

for which a development analysis or appraisal is necessary is not included in the scope of practice for a certified residential real property appraiser.

Source: Laws 1994, LB 1107, § 29; Laws 1997, LB 29, § 2; Laws 1997, LB 752, § 206; Laws 2001, LB 162, § 23; Laws 2006, LB 778, § 53; Laws 2007, LB186, § 16; Laws 2008, LB1011, § 11; Laws 2010, LB931, § 14; Laws 2012, LB714, § 7; Laws 2014, LB717, § 18; Laws 2015, LB139, § 50; Laws 2016, LB731, § 13; Laws 2019, LB77, § 7; Laws 2020, LB808, § 76; Laws 2021, LB23, § 7; Laws 2022, LB707, § 55.
Operative date April 19, 2022.

76-2232 Credential as a certified general real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; scope of practice.

(1) To qualify for a credential as a certified general real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a bachelor's degree, or higher, from an accredited degree-awarding college or university;

(c) Have his or her education evaluated for equivalency by one of the following if the college degree is from a foreign country:

(i) An accredited degree-awarding college or university;

(ii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services; or

(iii) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-awarding college or university;

(d)(i) Have successfully completed and passed examination for no fewer than three hundred class hours in Real Property Appraiser Board-approved qualifying education courses conducted by education providers as prescribed by rules and regulations of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. Each course shall include a proctored, closed-book examination pertinent to the material presented; or

(ii) Hold a degree in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum or the equivalent as determined by the Appraiser Qualifications Board. If the degree in real estate or equivalent as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (d)(i) of this subsection;

(e)(i) Have no fewer than three thousand hours of experience, of which one thousand five hundred hours shall be in nonresidential appraisal work, as prescribed by rules and regulations of the Real Property Appraiser Board. The required experience shall be acceptable to the Real Property Appraiser Board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than eighteen months; or

(ii) Successfully complete a PAREA program. If the PAREA program does not satisfy all required experience for credentialing, the remaining experience hours shall be completed pursuant to subdivision (e)(i) of this subsection;

(f) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(g) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board, pass a certified general real property appraiser examination, approved by the Appraiser Qualifications Board, prescribed by rules and regulations of the Real Property Appraiser Board, and administered by a contracted testing service.

(2) A certified general real property appraiser shall satisfy the requirements for the trainee real property appraiser credential, licensed residential real property appraiser credential, and certified residential real property appraiser credential for a downgraded credential. If requested, evidence acceptable to the Real Property Appraiser Board concerning the experience shall be presented along with an application in the form of written reports or file memoranda.

(3) The scope of practice for the certified general real property appraiser shall include real property appraisal practice concerning all types of real property or real estate that appraiser is competent to engage in.

Source: Laws 1990, LB 1153, § 32; Laws 1991, LB 203, § 34; Laws 1994, LB 1107, § 30; Laws 1997, LB 29, § 3; Laws 1997, LB 752, § 207; Laws 2001, LB 162, § 24; Laws 2006, LB 778, § 54; Laws 2007, LB186, § 17; Laws 2008, LB1011, § 12; Laws 2010, LB931, § 15; Laws 2012, LB714, § 8; Laws 2014, LB717, § 19; Laws 2015, LB139, § 51; Laws 2016, LB731, § 14; Laws 2019, LB77, § 8; Laws 2020, LB808, § 77; Laws 2021, LB23, § 8; Laws 2022, LB707, § 56.
Operative date April 19, 2022.

76-2233 Reciprocity; credential; issuance; when; applicant; duties; fingerprints; national criminal history record check; verification of status.

(1) A person currently credentialed to engage in real property appraisal practice concerning real estate and real property under the laws of another jurisdiction may qualify for a credential through reciprocity as a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser by complying with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing.

(2) An applicant under this section may qualify for a credential if, in the determination of the board:

(a) The requirements for credentialing in the applicant's jurisdiction of practice specified in an application for credentialing meet or exceed the minimum requirements of the Real Property Appraiser Qualification Criteria as

adopted and promulgated by the Appraiser Qualifications Board of The Appraisal Foundation; and

(b) The regulatory program of the applicant's jurisdiction of practice specified in an application for credentialing is determined to be effective in accordance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(3) The status of an applicant's jurisdiction of practice specified in an application for credentialing through reciprocity shall be verified through the most recent Compliance Review Report issued by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. In the case that findings pertaining to the adoption or implementation of the Real Property Appraiser Qualification Criteria indicate that one or more credentialing requirements do not meet or exceed the Real Property Appraiser Qualification Criteria as promulgated by the Appraiser Qualifications Board of The Appraisal Foundation, the board may request evidence from the jurisdiction of practice or the Appraisal Subcommittee of the Federal Financial Institutions Examination Council showing that progress has been made to mitigate the findings in the Compliance Review Report.

(4) To qualify for a credential through reciprocity, the applicant shall:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board;

(b) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities as a real property appraiser in this state; and

(c) Comply with such other terms and conditions as may be determined by the board.

(5) The credential status of an applicant under this section, including current standing and any disciplinary action imposed against his or her credentials, shall be verified through the National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Source: Laws 1990, LB 1153, § 33; Laws 1991, LB 203, § 35; Laws 1994, LB 1107, § 31; Laws 1997, LB 752, § 208; Laws 2001, LB 162, § 25; Laws 2006, LB 778, § 55; Laws 2007, LB186, § 18; Laws 2008, LB1011, § 13; Laws 2010, LB931, § 16; Laws 2014, LB717, § 20; Laws 2015, LB139, § 52; Laws 2016, LB731, § 15; Laws 2018, LB741, § 30; Laws 2020, LB808, § 78.

76-2233.01 Nonresident; temporary credential; issuance; when; investigation of violations.

(1) A nonresident currently credentialed to engage in real property appraisal practice concerning real estate and real property under the laws of another

jurisdiction may obtain a temporary credential as a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser to engage in real property appraisal practice in this state.

(2) To qualify for the issuance of a temporary credential, an applicant shall:

(a) Submit an application on a form approved by the board;

(b) Submit a letter of engagement or a contract indicating the location of the real property appraisal practice assignment;

(c) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state; and

(d) Pay the appropriate application fee in an amount established by the board pursuant to section 76-2241.

(3) The credential status of an applicant under this section, including current standing and any disciplinary action imposed against his or her credentials, shall be verified through the National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(4) Application for a temporary credential is valid for one year from the date application is made to the board or upon the expiration of the assignment specified in the letter of engagement, whichever occurs first.

(5) A temporary credential issued under this section shall be expressly limited to a grant of authority to engage in real property appraisal practice required for an assignment in this state. Each temporary credential shall expire upon the completion of the assignment or upon the expiration of a period of six months from the date of issuance, whichever occurs first. A temporary credential may be renewed for one additional six-month period.

(6) Any person issued a temporary credential to engage in real property appraisal practice in this state shall comply with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing. The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of the act by a person who is engaged in, or who has engaged in, real property appraisal practice as a temporary credential holder, and that person shall be deemed a real property appraiser within the meaning of the act.

Source: Laws 1991, LB 203, § 36; Laws 1994, LB 1107, § 32; Laws 1997, LB 752, § 209; Laws 2001, LB 162, § 26; Laws 2006, LB 778, § 56; Laws 2007, LB186, § 19; Laws 2010, LB931, § 17; Laws 2015, LB139, § 53; Laws 2016, LB731, § 16; Laws 2020, LB808, § 79; Laws 2022, LB707, § 57.
Operative date April 19, 2022.

76-2233.02 Credential; expiration; renewal; fees; random fingerprint audit program.

(1) A credential issued under the Real Property Appraiser Act other than a temporary credential shall remain in effect until December 31 of the designated year unless surrendered, revoked, suspended, or canceled prior to such date. To

renew a valid credential, the credential holder shall file an application on a form approved by the board and pay the appropriate renewal fee in an amount established by the board pursuant to section 76-2241. The credential holder shall also pay the criminal history record check fee in an amount established by the board pursuant to section 76-2241 for maintenance of the random fingerprint audit program to the board not later than November 30 of the designated year. A credential may be renewed for one year or two years. In every second year of the two-year continuing education period, as specified in section 76-2236, evidence of completion of continuing education requirements shall accompany renewal application or be on file with the board prior to renewal.

(2) The board shall establish a number of credential holders to be selected at random to submit, along with the application for renewal, two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board.

(3) If a credential holder fails to apply and meet the requirements for renewal by November 30 of the designated year, such credential holder may obtain a renewal of such credential by satisfying all of the requirements for renewal and paying the appropriate late processing fee in an amount established by the board pursuant to section 76-2241 if such late renewal takes place prior to July 1 of the following year. A credential holder selected at random to submit fingerprint cards or equivalent electronic fingerprints that has applied and met all other requirements for renewal prior to November 30 of the designated year shall not pay a late processing fee if fingerprint cards or equivalent electronic fingerprints are received prior to November 30 of the designated year. If a credential holder that first obtained his or her credential at the current level on or after November 1 fails to apply and meet the requirements for renewal by December 31 of the designated year, such credential holder may obtain a renewal of such credential by satisfying all the requirements for renewal and paying a late processing fee if such late renewal takes place prior to July 1 of the following year. The board may refuse to renew any credential if the credential holder has continued to, directly or indirectly for another, offer, attempt, agree to engage in, or engage in real property appraisal practice in this state following the expiration of his or her credential. If a credential is not renewed prior to July 1, a credential holder shall reapply for credentialing and meet the current requirements in place at the time of application, except as provided in section 76-2233.03.

Source: Laws 1991, LB 203, § 37; Laws 1994, LB 1107, § 33; Laws 2001, LB 162, § 27; Laws 2006, LB 778, § 57; Laws 2010, LB931, § 18; Laws 2014, LB717, § 21; Laws 2015, LB139, § 54; Laws 2020, LB808, § 80.

76-2233.03 Credential; inactive status; application; prohibited acts; reinstatement; expiration; reapplication.

(1) A credential holder may request that his or her credential be placed on inactive status for a period not to exceed two years. Such requests shall be submitted to the board on an application form prescribed by the board. The

payment of the appropriate fee in an amount established by the board pursuant to section 76-2241 shall accompany all applications for requests of inactive status.

(2) A credential holder whose credential is placed on inactive status shall not:

(a) Assume or use any title, designation, or abbreviation likely to create the impression that such person holds an active credential issued by the board; or

(b) Engage in real property appraisal practice or act as a credentialed real property appraiser.

(3) A credential holder whose credential is placed on inactive status may make a request to the board that such credential be reinstated to active status on an application form prescribed by the board. The payment of the appropriate fee in an amount established by the board pursuant to section 76-2241 shall accompany all applications for reinstatement of a credential.

(4) A credential holder's application for reinstatement shall include evidence that he or she has met the continuing education requirements as specified in section 76-2236 while the credential was on inactive status.

(5) If a credential holder's credential expires during the inactive period, an application for renewal of the credential shall accompany the application for reinstatement. All requirements for renewal specified in section 76-2233.02 shall be met, except for the requirement to pay a late processing fee for applications received after November 30 of the designated year.

(6) If a credential holder fails to reinstate his or her credential to active status prior to the completion of the two-year period, his or her credential will return to the status as if the credential was not placed on inactive status. If a credential holder's credential is expired at the completion of the two-year period, the credential holder shall reapply for credentialing and meet the current requirements in place at the time of application.

Source: Laws 2015, LB139, § 55; Laws 2018, LB741, § 31; Laws 2020, LB808, § 81.

76-2236 Continuing education; requirements.

(1) Every credential holder shall furnish evidence to the board that he or she has satisfactorily completed no fewer than twenty-eight hours of approved continuing education activities in each two-year continuing education period. Hours of satisfactorily completed approved continuing education activities cannot be carried over from one two-year continuing education period to another. Evidence of successful completion of such continuing education activities for the two-year continuing education period, including passing examination if applicable, shall be submitted to the board in the manner prescribed by the board. No continuing education activity shall be less than two hours in duration. A person who holds a temporary credential does not have to meet any continuing education requirements in the Real Property Appraiser Act.

(2) As prescribed by rules and regulations of the Real Property Appraiser Board and at least once every two years, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board or the equivalent of the course as approved by the Real Property Appraiser Board, shall be included in the continuing education requirement of each credential holder. An instructor certified by the Appraiser Qualifications Board satisfies this requirement by successfully com-

pleting a seven-hour instructor recertification course and examination as approved by the Appraiser Qualifications Board.

(3) A continuing education activity conducted in another jurisdiction in which the activity is approved to meet the continuing education requirements for renewal of a credential in such other jurisdiction shall be accepted by the board if that jurisdiction has adopted and enforces standards for such continuing education activity that meet or exceed the standards established by the Real Property Appraiser Act and the rules and regulations of the board.

(4) The board may adopt a program of continuing education for individual credentials as long as the program is compliant with the Appraiser Qualifications Board's criteria specific to continuing education.

(5) No more than fourteen hours may be approved by the Real Property Appraiser Board as continuing education in each two-year continuing education period for participation, other than as a student, in appraisal educational processes and programs, which includes teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education. Evidence of participation shall be submitted to the board upon completion of the appraisal educational process or program. No preapproval will be granted for participation in appraisal educational processes or programs.

(6) Qualifying education, as approved by the board, successfully completed by a credential holder to fulfill the class-hour requirement to upgrade to a higher classification than his or her current classification, shall be approved by the board as continuing education.

(7) Qualifying education, as approved by the board, taken by a credential holder not to fulfill the class-hour requirement to upgrade to a higher classification, shall be approved by the board as continuing education if the credential holder completes the examination.

(8) A board-approved supervisory real property appraiser and trainee course successfully completed by a certified real property appraiser shall be approved by the board as continuing education no more than once during each two-year continuing education period.

(9) The Real Property Appraiser Board shall approve continuing education activities and instructors which it determines would protect the public by improving the competency of credential holders.

Source: Laws 1990, LB 1153, § 36; Laws 1991, LB 203, § 40; Laws 1994, LB 1107, § 37; Laws 1997, LB 29, § 4; Laws 2001, LB 162, § 28; Laws 2006, LB 778, § 58; Laws 2007, LB186, § 20; Laws 2010, LB931, § 19; Laws 2012, LB714, § 9; Laws 2014, LB717, § 22; Laws 2015, LB139, § 56; Laws 2016, LB731, § 17; Laws 2018, LB741, § 32; Laws 2019, LB77, § 9; Laws 2020, LB808, § 82; Laws 2022, LB707, § 58.
Operative date April 19, 2022.

76-2238 Disciplinary action; denial of application; grounds.

The following acts and omissions shall be considered grounds for disciplinary action or denial of an application by the board:

(1) Failure to meet the minimum qualifications for credentialing established by or pursuant to the Real Property Appraiser Act;

(2) Procuring or attempting to procure a credential under the act by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board or procuring or attempting to procure a credential through fraud or misrepresentation;

(3) Paying money or other valuable consideration other than the fees provided for by the act to any member or employee of the board to procure a credential;

(4) An act or omission involving real estate or real property appraisal practice which constitutes dishonesty, fraud, or misrepresentation with or without the intent to substantially benefit the credential holder or another person or with the intent to substantially injure another person;

(5) Failure to demonstrate character and general fitness such as to command the confidence and trust of the public;

(6) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of any felony unless his or her civil rights have been restored;

(7) Entry of a final civil or criminal judgment, including dismissal with settlement, on grounds of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or real property appraisal practice;

(8) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is related to the qualifications, functions, or duties of a real property appraiser;

(9) Performing valuation services as a credentialed real property appraiser under an assumed or fictitious name;

(10) Paying a finder's fee or a referral fee to any person in connection with a real property appraisal practice assignment, except that an intracompany payment for business development shall not be considered to be unethical or a violation of this subdivision;

(11) Making a false or misleading statement in that portion of a written report that deals with professional qualifications or in any testimony concerning professional qualifications;

(12) Any violation of the act or any rules and regulations adopted and promulgated pursuant to the act;

(13) Failure to maintain, or to make available for inspection and copying, records required by the board;

(14) Demonstrating negligence, incompetence, or unworthiness to act as a real property appraiser, whether of the same or of a different character as otherwise specified in this section;

(15) Suspension or revocation of an appraisal credential or a license in another regulated occupation, trade, or profession in this or any other jurisdiction or disciplinary action taken by another jurisdiction that limits the real property appraiser's ability to engage in real property appraisal practice;

(16) Failure to renew or surrendering an appraisal credential or any other registration, license, or certification issued by any other regulatory agency or held in any other jurisdiction in lieu of disciplinary action pending or threatened;

(17) Failure to report disciplinary action taken against an appraisal credential or any other registration, license, or certification issued by any other

regulatory agency or held in any other jurisdiction within sixty days of receiving notice of such disciplinary action;

(18) Failure to comply with terms of a consent agreement or settlement agreement;

(19) Failure to submit or produce books, records, documents, workfiles, reports, or other materials requested by the board concerning any matter under investigation;

(20) Failure of an education provider to produce records, documents, reports, or other materials, including, but not limited to, required student attendance reports, to the board;

(21) Knowingly offering or attempting to offer a qualifying or continuing education course or activity as being approved by the board to a real property appraiser or an applicant, without first obtaining approval of the activity from the board, except for courses required by an accredited degree-awarding college or university for completion of a degree in real estate, if the college or university had its curriculum approved by the Appraiser Qualifications Board as qualifying education;

(22) Presentation to the Real Property Appraiser Board of any check which is returned to the State Treasurer unpaid, whether payment of fee is for an initial or renewal credential or for examination; and

(23) Failure to pass the examination.

Source: Laws 1990, LB 1153, § 38; Laws 1991, LB 203, § 42; Laws 1994, LB 1107, § 39; Laws 2001, LB 162, § 30; Laws 2006, LB 778, § 60; Laws 2010, LB931, § 21; Laws 2014, LB717, § 23; Laws 2015, LB139, § 59; Laws 2016, LB731, § 18; Laws 2018, LB741, § 34; Laws 2019, LB77, § 10; Laws 2020, LB808, § 83.

76-2239 Investigations; authorized; disciplinary action; cease and desist order; complaint; procedure; hearing.

(1) The board may, upon its own motion, and shall, upon the written complaint of any aggrieved person, cause an investigation to be made with respect to an alleged violation of the Real Property Appraiser Act. The board may revoke or suspend the credential or otherwise discipline a credential holder, revoke or suspend a qualifying or continuing education course or activity, deny any application, or issue a cease and desist order for any violation of the Real Property Appraiser Act. Any disciplinary action taken against a credentialed real property appraiser, including any action that limits a credentialed real property appraiser's ability to engage in real property appraisal practice, shall be reported to federal authorities as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Upon receipt of information indicating that a person may have violated any provision of the Real Property Appraiser Act, the board shall make an investigation of the facts to determine whether or not there is evidence of a violation. If technical assistance is required, the board may contract with or use qualified persons.

(2)(a) If an investigation indicates that a person may have violated a provision of the act, the board may offer the person an opportunity to voluntarily and informally discuss the alleged violation before the board. The board may enter into consent agreements or negotiate settlements.

(b) If an investigation indicates that a person not holding a credential under the act has violated a provision of the act, the board may issue a cease and desist order or refer the investigation to the appropriate county attorney for the consideration of formal charges.

(c) If an investigation indicates that a credential holder has violated a provision of the act, a formal complaint shall be prepared by the board and served upon the credential holder. The complaint shall require the credential holder to file an answer within thirty days of the date of service. In responding to a complaint, the credential holder may admit the allegations of the complaint, deny the allegations of the complaint, or plead otherwise. Failure to make a timely response shall be deemed an admission of the allegations of the complaint. Upon receipt of an answer to the complaint, the director or chairperson of the board shall set a date, time, and place for an administrative hearing on the complaint. The date of the hearing shall not be less than thirty nor more than one hundred twenty days from the date that the answer is filed unless such date is extended for good cause.

Source: Laws 1990, LB 1153, § 39; Laws 1991, LB 203, § 43; Laws 1994, LB 1107, § 40; Laws 2001, LB 162, § 31; Laws 2006, LB 778, § 61; Laws 2015, LB139, § 60; Laws 2020, LB808, § 84.

76-2243 Professional corporation; real property appraisal practice.

Nothing contained in the Real Property Appraiser Act shall be deemed to prohibit any credential holder under the act from engaging in real property appraisal practice as a professional corporation in accordance with the Nebraska Professional Corporation Act.

Source: Laws 1990, LB 1153, § 43; Laws 1991, LB 203, § 47; Laws 2001, LB 162, § 35; Laws 2006, LB 778, § 64; Laws 2015, LB139, § 63; Laws 2020, LB808, § 85.

Cross References

Nebraska Professional Corporation Act, see section 21-2201.

76-2245 Action for compensation; conditions.

No person engaged in real property appraisal practice in this state or acting in the capacity of a real property appraiser in this state may bring or maintain any action in any court of this state to collect compensation for the performance of valuation services for which credentialing is required by the Real Property Appraiser Act without alleging and proving that he or she was duly credentialed under the act in this state at all times during the performance of such services.

Source: Laws 1990, LB 1153, § 45; Laws 1991, LB 203, § 49; Laws 2001, LB 162, § 37; Laws 2006, LB 778, § 65; Laws 2015, LB139, § 65; Laws 2018, LB741, § 35; Laws 2020, LB808, § 86.

76-2246 Appraisal without credentials; penalty.

Any person required to be credentialed by the Real Property Appraiser Act who, directly or indirectly for another, offers, attempts, agrees to engage in, or engages in real property appraisal practice or who advertises or holds himself or herself out to the general public as a real property appraiser in this state without obtaining proper credentialing under the act shall be guilty of a Class

III misdemeanor and shall be ineligible to apply for credentialing under the act for a period of one year from the date of his or her conviction of such offense. The board may, in its discretion, credential such person within such one-year period upon application and after an administrative hearing.

Source: Laws 1990, LB 1153, § 46; Laws 1991, LB 203, § 50; Laws 1994, LB 1107, § 44; Laws 2001, LB 162, § 38; Laws 2006, LB 778, § 66; Laws 2015, LB139, § 66; Laws 2018, LB741, § 36; Laws 2020, LB808, § 87.

76-2247.01 Services; authorized; standards applicable.

(1) A person may retain or employ a real property appraiser credentialed under the Real Property Appraiser Act to perform valuation services. In each case, the valuation services specific to real property appraisal practice, including any report, shall comply with the Real Property Appraiser Act and the Uniform Standards of Professional Appraisal Practice.

(2) In a valuation assignment, the real property appraiser shall remain an impartial, disinterested third party. When providing an evaluation assignment, the real property appraiser may respond to a client's stated objective but shall also remain an impartial, disinterested third party.

Source: Laws 1991, LB 203, § 51; Laws 1994, LB 1107, § 45; Laws 2001, LB 162, § 39; Laws 2006, LB 778, § 67; Laws 2007, LB186, § 24; Laws 2015, LB139, § 67; Laws 2018, LB741, § 37; Laws 2020, LB808, § 88.

ARTICLE 23

ONE-CALL NOTIFICATION SYSTEM

Section

76-2301 Act, how cited.

Sections 76-2301 to 76-2332 shall be known and may be cited as the One-Call Notification System Act.

Source: Laws 1994, LB 421, § 1; Laws 2002, LB 1105, § 494; Laws 2013, LB589, § 1; Laws 2014, LB930, § 1; Laws 2019, LB462, § 1.

76-2303 Definitions, where found.

For purposes of the One-Call Notification System Act, the definitions found in sections 76-2303.01 to 76-2317 shall be used.

Source: Laws 1994, LB 421, § 3; Laws 2013, LB589, § 2; Laws 2019, LB462, § 2.

76-2305 Center, defined.

Center means a call center which shall have as its principal purpose the statewide receipt and dissemination to participating operators of information on a fair and uniform basis concerning intended excavations by excavators in areas where operators have underground facilities.

Source: Laws 1994, LB 421, § 5; Laws 2019, LB462, § 3.

76-2310.01 Locator, defined.

Locator means a person who identifies and marks underground facilities for an operator, including a contractor who performs such location services for an operator.

Source: Laws 2019, LB462, § 4.

76-2315 Person, defined.

Person means an individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation and shall include the employer, employee, or contractor of an individual.

Source: Laws 1994, LB 421, § 15; Laws 2019, LB462, § 5.

76-2316 Repealed. Laws 2019, LB462, § 24.

76-2316.01 Ticket, defined.

Ticket means the compilation of data received by the center in the notice of excavation and the facility locations provided to the center and which is assigned a unique identifying number.

Source: Laws 2019, LB462, § 6.

76-2318 Center; membership required.

Operators of underground facilities shall become members of and participate in the center.

Source: Laws 1994, LB 421, § 18; Laws 2019, LB462, § 7.

76-2319 Board of directors; rules and regulations; selection of vendor.

(1) The center shall be governed by a board of directors who shall oversee operation of the center pursuant to rules and regulations adopted and promulgated by the State Fire Marshal to carry out the One-Call Notification System Act. The board of directors shall have the authority to propose rules and regulations which may be adopted and promulgated pursuant to this section and have such other authority as provided by rules and regulations adopted and promulgated by the State Fire Marshal that are not inconsistent with the One-Call Notification System Act.

(2) The board of directors shall also establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board of directors, and any agreement shall be reviewed by the board of directors at least once every three years, with an opportunity to receive new bids if desired by the board of directors.

(3) The rules and regulations adopted and promulgated by the State Fire Marshal to carry out subsection (2) of this section may provide for:

(a) Any requirements necessary to comply with United States Department of Transportation programs;

(b) The qualifications, appointment, retention, and composition of the board of directors; and

(c) Best practices for the marking, location, and notification of proposed excavations which shall govern the center, excavators, and operators of underground facilities.

(4) Any rule or regulation adopted and promulgated by the State Fire Marshal pursuant to subdivision (3)(c) of this section shall originate with the board of directors.

Source: Laws 1994, LB 421, § 19; Laws 2017, LB263, § 95; Laws 2019, LB462, § 8.

76-2319.01 Board of directors; duties; report.

The board of directors shall assess the effectiveness of enforcement programs, enforcement actions, and its damage prevention and public awareness programs and make a report to the Governor and the Legislature no later than December 1, 2021, and by December 1 every odd-numbered year thereafter. The report to the Legislature shall be made electronically.

Source: Laws 2019, LB462, § 11.

76-2320.01 Locator; training required.

Any locator acting as a contractor for an operator to perform location services shall be trained in locator standards and practices applicable to the industry. The board of directors may review locator training materials provided by operators, locators, and excavators and may make recommendations regarding best practices for locators, if deemed appropriate.

Source: Laws 2019, LB462, § 9.

76-2320.02 Use of plastic or nonmetallic underground facilities; installation requirements.

Notwithstanding any other provision of the One-Call Notification System Act, any plastic or nonmetallic underground facilities installed underground on or after January 1, 2021, shall be installed in such a manner as to be locatable, either by mapping or by use of tracer wire, by the operator for purposes of the act.

Source: Laws 2019, LB462, § 10.

76-2322 Excavator; notice to center.

An excavator shall serve notice of intent to excavate upon the center by submitting a locate request using a method provided by the center. The center shall inform the excavator of all operators to whom such notice will be transmitted and shall promptly transmit such notice to every operator having an underground facility in the area of intended excavation. The notice shall be transmitted to operators and excavators as a ticket. The center shall assign an identification number to each notice received, which number shall be evidenced on the ticket.

Source: Laws 1994, LB 421, § 22; Laws 2014, LB736, § 1; Laws 2019, LB462, § 12.

76-2323 Underground facilities; mark or identify.

(1) Upon receipt of the information contained in the notice pursuant to section 76-2321, an operator shall advise the excavator of the approximate location of underground facilities in the area of the proposed excavation by marking or identifying the location of the underground facilities with stakes, flags, paint, or any other clearly identifiable marking or reference point and shall indicate if the underground facilities are subject to section 76-2331. The location of the underground facility given by the operator shall be within a strip of land eighteen inches on either side of the marking or identification plus one-half of the width of the underground facility. If in the opinion of the operator the precise location of a facility cannot be determined and marked as required, the operator shall provide all pertinent information and field locating assistance to the excavator at a mutually agreed to time. The location shall be marked or identified using color standards prescribed by the center. The operator shall respond no later than two business days after receipt of the information in the notice or at a time mutually agreed to by the parties.

(2) The marking or identification shall be done in a manner that will last for a minimum of five business days on any nonpermanent surface and a minimum of ten business days on any permanent surface. If the excavation will continue for longer than five business days, the operator shall remark or reidentify the location of the underground facility upon the request of the excavator. The request for remarking or reidentification shall be made through the center.

(3) An operator who determines that such operator does not have any underground facility located in the area of the proposed excavation shall notify the center of the determination prior to the date of commencement of the excavation, or prior to two full business days after transmittal of the ticket, whichever occurs sooner. All ticket responses made under this subsection shall be transmitted to the operator and excavator by the center.

Source: Laws 1994, LB 421, § 23; Laws 2014, LB930, § 3; Laws 2019, LB462, § 13.

76-2325 Violations; civil penalty.

(1) Any person who violates section 76-2320, 76-2320.01, 76-2320.02, 76-2321, 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 shall be subject to a civil penalty as follows:

(a) For a violation by an excavator or an operator related to a gas or hazardous liquid underground pipeline facility or a fiber optic telecommunica-

tions facility, an amount not to exceed ten thousand dollars for each violation for each day the violation persists, up to a maximum of five hundred thousand dollars; and

(b) For a violation by an excavator or an operator related to any other underground facility, an amount not to exceed five thousand dollars for each day the violation persists, up to a maximum of fifty thousand dollars.

(2) An action to recover a civil penalty shall be brought by the Attorney General or a prosecuting attorney on behalf of the State of Nebraska in any court of competent jurisdiction of this state. The trial shall be before the court, which shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, any good faith attempt to achieve compliance, and such other matters as justice may require in determining the amount of penalty imposed. All penalties shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 421, § 25; Laws 2014, LB930, § 5; Laws 2017, LB263, § 97; Laws 2019, LB462, § 14.

76-2325.02 Attorney General; annual report; contents.

The Attorney General shall make an annual report to the Legislature, the State Fire Marshal, and the board of directors by each March 15 on the number of complaints filed and the number of such complaints prosecuted under section 76-2325 during the previous calendar year. The report to the Legislature shall be made electronically.

Source: Laws 2019, LB462, § 15.

76-2332 State Fire Marshal; powers.

The State Fire Marshal may, by rule and regulation, define occurrences relating to damage of an underground facility that creates an emergency condition that requires an excavator to immediately notify an operator or a locator, if applicable, and the center regarding the location and extent of damage to an underground facility.

Source: Laws 2019, LB462, § 16.

ARTICLE 26

UNIFORM ENVIRONMENTAL COVENANTS ACT

Section
76-2602. Terms, defined.
76-2608. Recording.

76-2602 Terms, defined.

In the Uniform Environmental Covenants Act:

(1) Activity and use limitations means restrictions or obligations created under the act with respect to real property.

(2) Agency means the Department of Environment and Energy or any other Nebraska or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3) Common interest community means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(4) Environmental covenant means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) Environmental response project means a plan or work performed for environmental remediation of real property and conducted:

(A) Under a federal or state program governing environmental remediation of real property, including the Petroleum Release Remedial Action Act;

(B) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(C) Under a state voluntary cleanup program authorized by the Remedial Action Plan Monitoring Act.

(6) Holder means the grantee of an environmental covenant as specified in subsection (a) of section 76-2603.

(7) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Source: Laws 2005, LB 298, § 3; Laws 2019, LB302, § 94.

Cross References

Petroleum Release Remedial Action Act, see section 66-1501.
Remedial Action Plan Monitoring Act, see section 81-15,181.

76-2608 Recording.

(a) An environmental covenant, any amendment or termination of the covenant under section 76-2609 or 76-2610, and any subordination agreement must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in subsection (c) of section 76-2609, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

(c) A copy of a document recorded under subsection (a) of this section shall also be provided to the Department of Environment and Energy if the department has not signed the covenant.

(d) The department shall make available to the public a listing of all documents under subsection (a) of this section or documents under subsection (c) of this section which have been provided to the department.

Source: Laws 2005, LB 298, § 9; Laws 2019, LB302, § 95.

ARTICLE 32

NEBRASKA APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT

Section

76-3202 Terms, defined.

For purposes of the Nebraska Appraisal Management Company Registration Act:

(1) Affiliate means any person that controls, is controlled by, or is under common control with, another person;

(2) AMC appraiser means a person who holds a valid credential or equivalent to appraise real estate and real property under the laws of this state or another jurisdiction, and holds the status of active on the National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council in one or more jurisdictions;

(3) AMC final rule means, collectively, the rules adopted by the federal agencies as required in section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as such rules existed on January 1, 2019;

(4) AMC National Registry means the registry of appraisal management companies that hold a registration as an appraisal management company issued by the board or the equivalent issued in another jurisdiction, and federally regulated appraisal management companies, maintained by the Appraisal Subcommittee;

(5) Appraisal has the same meaning as in section 76-2204;

(6) Appraisal management company means a person that:

(a) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(b) Provides appraisal management services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(c) Within a twelve-month period, oversees an appraiser panel of:

(i) More than fifteen AMC appraisers who each hold a credential in this state; or

(ii) Twenty-five or more AMC appraisers who each hold a credential or equivalent in two or more jurisdictions;

(7) Appraisal management services means one or more of the following:

(a) To recruit, select, and retain AMC appraisers;

(b) To contract with AMC appraisers to perform assignments;

(c) To manage the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and reports, submitting completed reports to creditors and secondary mortgage market participants, collecting fees from creditors and secondary mortgage market participants for services provided, and paying AMC appraisers for valuation services performed; or

(d) To review and verify the work of AMC appraisers;

(8) Appraisal Subcommittee means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council;

(9) Appraiser panel means a network, list, or roster of AMC appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company;

(10) Assignment has the same meaning as in section 76-2207.01;

(11) Board has the same meaning as in section 76-2207.18;

(12) Consumer credit means credit offered or extended to a consumer primarily for personal, family, or household purposes;

(13) Contact person means a person designated by the appraisal management company as the main contact for all communication between the appraisal management company and the board;

(14) Covered transaction means any consumer credit transaction secured by the consumer's principal dwelling;

(15) Credential has the same meaning as in section 76-2207.25;

(16) Creditor means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, not including a downpayment, and to whom the obligation is initially payable, either on the face of the note or contract or by agreement when there is no note or contract. A person regularly extends consumer credit if:

(a) The person extended credit, other than credit subject to the requirements of 12 C.F.R. 1026.32, as such regulation existed on January 1, 2019, more than five times for transactions secured by a dwelling in the preceding calendar year, or in the current calendar year if a person did not meet these standards in the preceding calendar year; and

(b) In any twelve-month period, the person originates more than one credit extension that is subject to the requirements of 12 C.F.R. 1026.32, as such regulation existed on January 1, 2019, or one or more such credit extensions through a mortgage broker;

(17) Dwelling means a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer if used as a residence. With respect to a dwelling:

(a) A consumer may have only one principal dwelling at a time;

(b) A vacation or secondary dwelling is not a principal dwelling; and

(c) A dwelling bought or built by a consumer with the intention of that dwelling becoming the consumer's principal dwelling within one year, or upon completion of construction, is considered to be the consumer's principal dwelling for the purpose of the Nebraska Appraisal Management Company Registration Act;

(18) Federally regulated appraisal management company means an appraisal management company that is:

(a) Owned and controlled by an insured depository institution as defined in 12 U.S.C. 1813, as such section existed on January 1, 2019; and

(b) Regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the successor of any such agencies;

(19) Federal agencies means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, or the successor of any of such agencies;

(20) Financial Institutions Reform, Recovery, and Enforcement Act of 1989 has the same meaning as in section 76-2207.30;

(21) Independent contractor means a person established as an independent contractor by the appraisal management company for the purpose of federal income taxation;

(22) Jurisdiction has the same meaning as in section 76-2207.32;

(23) Person has the same meaning as in section 76-2213.02;

(24) Real estate has the same meaning as in section 76-2214;

(25) Real property has the same meaning as in section 76-2214.01;

(26) Real property appraisal practice has the same meaning as in section 76-2215;

(27) Registration means a registration as an appraisal management company in this state issued by the board if all requirements for approval as an appraisal management company required in the Nebraska Appraisal Management Company Registration Act have been met by a person making application to the board, including the submission of all required fees, and the board has granted all rights to the person to operate as an appraisal management company in this state as allowed under the act;

(28) Report has the same meaning as in section 76-2216.02;

(29) Secondary mortgage market participant means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities, and only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security;

(30) Uniform Standards of Professional Appraisal Practice has the same meaning as in section 76-2218.02; and

(31) Valuation services has the same meaning as in section 76-2219.01.

Source: Laws 2011, LB410, § 2; Laws 2015, LB139, § 72; Laws 2018, LB17, § 3; Laws 2019, LB77, § 11; Laws 2020, LB808, § 89.

76-3203 Registration; application; contents; form; surety bond; qualifications; renewal.

(1) An application for issuance of a registration shall be made in writing to the board on forms approved by the board, which includes, but is not limited to, all information required by the board necessary to administer and enforce the Nebraska Appraisal Management Company Registration Act, and the name of the contact person for the appraisal management company.

(2) An applicant for issuance of a registration shall furnish to the board, at the time of making application, a surety bond in the amount of twenty-five thousand dollars. The surety bond required under this subsection shall be issued by a bonding company or insurance company authorized to do business in this state, and a copy of the bond shall be filed with the board. The bond shall be in favor of the state for the benefit of any person who is damaged by any violation of the Nebraska Appraisal Management Company Registration Act. The bond shall also be in favor of any person damaged by such a violation. Any person claiming against the bond for a violation of the act may maintain an action at law against the appraisal management company and against the surety. The aggregate liability of the surety to all persons damaged by a violation of the act by an appraisal management company shall not exceed the amount of the bond. The bond shall be maintained until one year after the date that the appraisal management company ceases operation in this state.

(3) A registration shall be issued only to persons who:

(a) Meet the requirements for issuance of a registration;

(b) Have a good reputation for honesty, trustworthiness, integrity, and competence to perform appraisal management services in such manner as to safeguard the interest of the public as determined by the board; and

(c) Have not had a final civil or criminal judgment entered against them for fraud, dishonesty, breach of trust, or misrepresentation involving real estate, financial services, or appraisal management services within a five-year period immediately preceding the date of application.

(4) A registration shall be valid for a period of twelve months beginning on the date which the registration was issued or renewed unless canceled, revoked, or surrendered.

(5) All information related to an appraisal management company's registration shall be reported to the Appraisal Subcommittee as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the AMC final rule, and any policy or rule established by the Appraisal Subcommittee.

(6) The renewal of a registration includes the same requirements found in subsections (1) through (5) of this section. An application for renewal of a registration shall be furnished to the board no later than sixty days prior to the date of expiration of the registration.

(7) For the purpose of subdivision (6) of section 76-3202, the twelve-month period for renewal of a registration shall consist of the twelve months pursuant to subsection (4) of this section.

Source: Laws 2011, LB410, § 3; Laws 2018, LB17, § 4; Laws 2019, LB77, § 12.

76-3203.01 Appraiser panel; removal; notice; reconsideration of removal.

(1) Only AMC appraisers considered to be in good standing in all jurisdictions in which an active credential is held shall be included on an appraisal management company's appraiser panel.

(2) An appraisal management company shall remove any AMC appraiser from its appraiser panel within thirty days after receiving notice that the AMC appraiser:

(a) Is no longer considered to be in good standing in one or more jurisdictions in which he or she holds an active credential or equivalent;

(b) The AMC appraiser's credential or equivalent has been refused, denied, canceled, or revoked; or

(c) The AMC appraiser has surrendered his or her credential or equivalent in lieu of revocation.

(3) Pursuant to subdivision (6)(c) of section 76-3202, an appraiser panel shall include each AMC appraiser as of the earliest date on which such person was accepted by the appraisal management company:

(a) For consideration for future assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or

(b) For engagement to perform one or more appraisals on behalf of a creditor for a covered transaction or for a secondary mortgage market participant in connection with covered transactions.

(4) Any AMC appraiser included on an appraisal management company's appraiser panel pursuant to subsection (3) of this section shall remain on such appraiser panel until the date on which the appraisal management company:

(a) Sends written notice to the AMC appraiser removing him or her from the appraiser panel. Such written notice shall include an explanation of the action taken by the appraisal management company;

(b) Receives written notice from the AMC appraiser requesting that he or she be removed from the appraiser panel. Such written notice shall include an explanation of the action requested by the AMC appraiser; or

(c) Receives written notice on behalf of the AMC appraiser of the death or incapacity of the AMC appraiser. Such written notice shall include an explanation on behalf of the AMC appraiser.

(5) Upon receipt of notice that he or she has been removed from the appraisal management company's appraiser panel, an AMC appraiser shall have thirty days to provide a response to the appraisal management company that removed the AMC appraiser from its appraiser panel. Upon receipt of the AMC appraiser's response, the appraisal management company shall have thirty days to reconsider the removal and provide a written response to the AMC appraiser.

(6) If an AMC appraiser is removed from an appraisal management company's appraiser panel pursuant to subsection (4) of this section, nothing shall prevent the appraisal management company at any time during the twelve months after removal from the appraiser panel from considering such person for future assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions, or for engagement to perform one or more appraisals on behalf of a creditor for a covered transaction or for a secondary mortgage market participant in connection with covered transactions. If such consideration or engagement takes place, the

removal shall be deemed not to have occurred and such person shall be deemed to have been included on the appraiser panel without interruption.

(7) Any AMC appraiser included on an appraisal management company's appraiser panel engaged in real property appraisal practice as a result of an assignment provided by an appraisal management company shall be free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the federal Truth in Lending Act, as such section existed on January 1, 2018, including the requirements for payment of a reasonable and customary fee to AMC appraisers when the appraisal management company is engaged in providing appraisal management services.

(8) An appraisal management company shall select an AMC appraiser from its appraiser panel for an assignment who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the assignment for the particular market and property type.

Source: Laws 2018, LB17, § 5; Laws 2019, LB77, § 13; Laws 2020, LB808, § 90.

76-3204 Act; exemptions.

The Nebraska Appraisal Management Company Registration Act does not apply to:

(1) A department or division of a person that provides appraisal management services only to itself; or

(2) A person that provides appraisal management services but does not meet the requirement established by subdivision (6)(c) of section 76-3202.

Source: Laws 2011, LB410, § 4; Laws 2015, LB139, § 73; Laws 2018, LB17, § 7; Laws 2019, LB77, § 14.

76-3207 Applicant for registration or renewal; ownership restrictions; fingerprint submission; criminal history record check; costs.

(1) A person applying for issuance of a registration or renewal of a registration shall not:

(a) In whole or in part, directly or indirectly, be owned by any person who has had a credential or equivalent refused, denied, canceled, or revoked or who has surrendered a credential or equivalent in lieu of revocation in any jurisdiction for a substantive cause as determined by the board; and

(b) Be more than ten percent owned by a person who is not of good moral character, which for purposes of this section shall require that such person has not been convicted of, or entered a plea of nolo contendere to, a felony relating to the real property appraisal practice or any crime involving fraud, misrepresentation, or moral turpitude or failed to submit to a criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation.

(2) For purposes of subdivision (1)(b) of this section, each individual owner of more than ten percent of an appraisal management company shall, at the time an application for issuance of a registration is made, submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. The

board shall pay the Nebraska State Patrol the costs associated with conducting a fingerprint-based national criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board.

(3) For the purpose of subdivision (1)(a) of this section, a person is not barred from issuance of a registration if the credential or equivalent of the person with an ownership interest was not refused, denied, canceled, revoked, or surrendered in lieu of revocation for a substantive cause as determined by the board and has been reinstated by the jurisdiction in which the action was taken.

Source: Laws 2011, LB410, § 7; Laws 2018, LB17, § 10; Laws 2020, LB808, § 91.

76-3210 Compliance with Real Property Appraiser Act.

Any employee of or independent contractor to an appraisal management company that holds a registration, including any AMC appraiser included on an appraisal management company's appraiser panel engaged in real property appraisal practice, shall comply with the Real Property Appraiser Act, including the Uniform Standards of Professional Appraisal Practice.

Source: Laws 2011, LB410, § 10; Laws 2018, LB17, § 12; Laws 2020, LB808, § 92.

Cross References

Real Property Appraiser Act, see section 76-2201.

76-3216 Prohibited acts; board; violations; enforcement actions; fine; considerations; report required.

(1) It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration or by meeting the requirements as a federally regulated appraisal management company.

(2) Except as provided in section 76-3204, any person who, directly or indirectly for another, offers, attempts, or agrees to perform all actions described in subdivision (6) of section 76-3202 or any action described in subdivision (7) of such section, shall be deemed an appraisal management company within the meaning of the Nebraska Appraisal Management Company Registration Act, and such action shall constitute sufficient contact with this state for the exercise of personal jurisdiction over such person in any action arising out of the act.

(3) The board may issue a cease and desist order against any person who violates this section by performing any action described in subdivision (6) or (7) of section 76-3202 without the appropriate registration. Such order shall be final ten days after issuance unless such person requests a hearing pursuant to section 76-3217. The board may, through the Attorney General, obtain an order from the district court for the enforcement of the cease and desist order.

(4) To the extent permitted by any applicable federal legislation or regulation, the board may censure an appraisal management company, conditionally or unconditionally suspend or revoke its registration, or levy fines or impose civil penalties not to exceed five thousand dollars for a first offense and not to exceed ten thousand dollars for a second or subsequent offense, if the board

determines that an appraisal management company is attempting to perform, has performed, or has attempted to perform any of the following:

(a) A material violation of the act;

(b) A violation of any rule or regulation adopted and promulgated by the board; or

(c) Procurement of a registration for itself or any other person by fraud, misrepresentation, or deceit.

(5) In order to promote voluntary compliance, encourage appraisal management companies to correct errors promptly, and ensure a fair and consistent approach to enforcement, the board shall endeavor to impose fines or civil penalties that are reasonable in light of the nature, extent, and severity of the violation. The board shall also take action against an appraisal management company's registration only after less severe sanctions have proven insufficient to ensure behavior consistent with the Nebraska Appraisal Management Company Registration Act. When deciding whether to impose a sanction permitted by subsection (4) of this section, determining the sanction that is most appropriate in a specific instance, or making any other discretionary decision regarding the enforcement of the act, the board shall consider whether an appraisal management company:

(a) Has an effective program reasonably designed to ensure compliance with the act;

(b) Has taken prompt and appropriate steps to correct and prevent the recurrence of any detected violations; and

(c) Has independently reported to the board any significant violations or potential violations of the act prior to an imminent threat of disclosure or investigation and within a reasonably prompt time after becoming aware of the occurrence of such violations.

(6) Any violation of appraisal-related laws or rules and regulations, and disciplinary action taken against an appraisal management company, shall be reported to the Appraisal Subcommittee as required by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the AMC final rule, and any policy or rule established by the Appraisal Subcommittee.

Source: Laws 2011, LB410, § 16; Laws 2018, LB17, § 17; Laws 2019, LB77, § 15.

ARTICLE 34

NEBRASKA UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

Section
76-3413. Revocation by instrument authorized; revocation by act not permitted.

76-3413 Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or part of the deed and that is executed with the same formalities as required in section 76-3409;

(C) An inter vivos deed that expressly or by inconsistency revokes the transfer on death deed or part of the deed; or

(D) An inter vivos deed to a bona fide purchaser that expressly or by inconsistency revokes the transfer on death deed or part of the deed; and

(2) Is an instrument under subdivisions (1)(A), (B), and (C) of this subsection that is acknowledged by the transferor after the acknowledgment of the deed being revoked and is recorded before the transferor's death. For any instrument under subdivision (1)(D) of this subsection, such instrument must be acknowledged by the transferor after the acknowledgment of the deed being revoked and must be recorded before the later of thirty days after being executed or the transferor's death. Any instrument under this subsection shall be recorded in the public records in the office of the register of deeds of the county where the deed being revoked is recorded.

(b) If a transfer on death deed is made by more than one transferor:

(1) Revocation by a transferor does not affect the deed as to the interest of another transferor; and

(2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners who were transferors.

(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an inter vivos transfer of the property.

(e) A bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim.

Source: Laws 2012, LB536, § 13; Laws 2020, LB966, § 19.

ARTICLE 35

RADON RESISTANT NEW CONSTRUCTION ACT

Section

76-3501 Act, how cited.

Sections 76-3501 to 76-3507 shall be known and may be cited as the Radon Resistant New Construction Act.

Source: Laws 2017, LB9, § 1; Laws 2019, LB130, § 4.

76-3502 Legislative findings.

The Legislature finds that:

(1) Radon is a radioactive element that is part of the radioactive decay chain of naturally occurring uranium in soil;

(2) Radon is the leading cause of lung cancer among nonsmokers and is the number one risk in homes according to the Harvard Center for Risk Analysis at the Harvard T.H. Chan School of Public Health;

(3) The World Health Organization Handbook on Indoor Radon includes key messages which state:

(a) ''There is no known threshold concentration below which radon exposure presents no risk.''; and

(b) ''The majority of radon-induced lung cancers are caused by low and moderate radon concentrations rather than by high radon concentrations, because in general less people are exposed to high indoor radon concentrations.'';

(4) The Surgeon General of the United States urged Americans to test their homes to find out how much radon they might be breathing;

(5) The United States Environmental Protection Agency estimates that more than twenty thousand Americans die of radon-related lung cancer each year;

(6) The United States Environmental Protection Agency has identified radon levels in Nebraska as the third highest in the United States because of the high concentration of uranium in the soil; and

(7) In 2018, the Radon Resistant New Construction Task Force recommended minimum standards for radon resistant new construction to the Governor, the Health and Human Services Committee of the Legislature, and the Urban Affairs Committee of the Legislature.

Source: Laws 2017, LB9, § 2; Laws 2019, LB130, § 5.

76-3503 Terms, defined.

For purposes of the Radon Resistant New Construction Act:

(1) Active radon mitigation system means a family of radon mitigation systems involving mechanically driven soil depressurization, including subslab depressurization, drain tile depressurization, block wall depressurization, and submembrane depressurization. Active radon mitigation system is also known as active soil depressurization;

(2) Building contractor means any individual, corporation, partnership, limited liability company, or other business entity that engages in new construction;

(3) Department means the Department of Health and Human Services;

(4) New construction means any original construction of a single-family home or a multifamily dwelling, including apartments, group homes, condominiums, and townhouses, or any original construction of a building used for commercial, industrial, educational, or medical purposes. New construction does not include additions to existing structures or remodeling of existing structures;

(5) Passive radon mitigation system means a pipe installed in new construction that relies solely on the convective flow of air upward for soil gas depressurization and may consist of multiple pipes routed through conditioned space from below the foundation to above the roof;

(6) Radon mitigation specialist means an individual who is licensed by the department as a radon mitigation specialist in accordance with the Radiation Control Act; and

(7) Radon resistant new construction means construction that utilizes design elements and construction techniques that passively resist radon entry and prepare a building for an active postconstruction mitigation system.

Source: Laws 2017, LB9, § 3; Laws 2019, LB130, § 6.

Cross References

Radiation Control Act, see section 71-3519.

76-3504 Radon resistant new construction; minimum standards.

Except as provided in section 76-3505, new construction built after September 1, 2019, in the State of Nebraska that is intended to be regularly occupied by people shall be built using radon resistant new construction. Such construction shall meet the following minimum standards:

(1) Sumps:

(a) A sump pit open to soil or serving as the termination point for subslab or exterior drain tile loops shall be covered with a gasketed or otherwise sealed lid;

(b) A sump used as the suction point in a subslab depressurization system shall have a lid designed to accommodate the vent pipe; and

(c) A sump used as a floor drain shall have a lid equipped with a trapped inlet;

(2) A passive subslab depressurization system shall be installed during construction in basement or slab-on-grade buildings, including the following components:

(a) Vent pipe:

(i)(A) A minimum three-inch diameter acrylonitrile butadiene styrene (ABS), polyvinyl chloride (PVC), or equivalent gas-tight pipe shall be embedded vertically into the subslab permeable material before the slab is cast. A ''T'' fitting or equivalent method shall be used to ensure that the pipe opening remains within the subslab permeable material; or

(B) A minimum three-inch diameter ABS, PVC, or equivalent gas-tight pipe shall be inserted directly into an interior perimeter drain tile loop or through a sealed sump cover where the sump is exposed to the subslab or connected to it through a drainage system;

(ii) The pipe shall be extended up through the building floors and terminate at least twelve inches above the surface of the roof in a location at least ten feet away from any window or other opening into the conditioned spaces of the building that is less than two feet below the exhaust point and ten feet from any window or other opening in adjoining or adjacent buildings; and

(iii) In buildings where interior footings or other barriers separate the subslab gas-permeable material, each area shall be fitted with an individual vent pipe. Vent pipes shall connect to a single vent that terminates above the roof or each individual vent pipe shall terminate separately above the roof. All exposed and visible interior radon vent pipes shall be identified with at least one label on each floor and in accessible attics. Such label shall read: Radon Reduction System; and

(3) Power source: In order to provide for future installation of an active radon mitigation system, an electrical circuit terminated in an approved box shall be installed during construction in the attic or other anticipated location of vent pipe fans.

Source: Laws 2017, LB9, § 4; Laws 2019, LB130, § 7.

76-3505 New construction not required to use radon resistant new construction; when.

New construction after September 1, 2019, shall not be required to use radon resistant new construction if (1) the construction project utilizes the design of an architect or professional engineer licensed under the Engineers and Architects Regulation Act, (2) the construction project is located in a county in which the average radon concentration is less than two and seven-tenths picocuries per liter of air as determined by the department pursuant to section 76-3507, or (3) other than for any residential dwelling unit, a local building official makes a determination, after a review of relevant guidelines for the intended use of the structure and property conditions, that radon resistant new construction is not necessary.

Source: Laws 2017, LB9, § 5; Laws 2019, LB130, § 8.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

76-3506 Conversion of passive radon mitigation system to active radon mitigation system authorized.

A building contractor or a subcontractor of a building contractor may convert a passive radon mitigation system to an active radon mitigation system in accordance with rules and regulations adopted and promulgated by the department under the Radiation Control Act for radon mitigation, but the contractor or subcontractor is not required to be a radon mitigation specialist to convert such system. A radon mitigation specialist shall conduct any postinstallation testing of such system.

Source: Laws 2019, LB130, § 9.

Cross References

Radiation Control Act, see section 71-3519.

76-3507 Department; duties.

On or before January 1, 2020, and on or before January 1 of each year thereafter, the department shall compile the results of the radon measurements performed in the past five years that were reported to the department pursuant to the rules and regulations adopted and promulgated by the department regarding the control of radiation and report such compilation electronically to the Clerk of the Legislature. Such report shall determine the average radon concentration in Nebraska by county and identify each county in which such average concentration exceeds two and seven-tenths picocuries per liter of air.

Source: Laws 2019, LB130, § 10.

ARTICLE 36
HOME INSPECTION

Section
76-3601. Terms, defined.
76-3602. Registration; required, when; signature requirements; registration, contents.
76-3603. Fee; certificate of insurance.
76-3604. Required information; report changes.
76-3605. Violation; penalty.
76-3606. Rules and regulations.

76-3601 Terms, defined.

For purposes of sections 76-3601 to 76-3606:

(1) Home inspection means the process by which a home inspector examines the observable systems and components of improvements to residential real property that are readily accessible to such inspector;

(2) Home inspector means a person who, for compensation, conducts a home inspection; and

(3) Residential real property means a structure used or intended to be used as a residence and consisting of one to four family dwelling units.

Source: Laws 2021, LB423, § 1.
Operative date January 1, 2023.

76-3602 Registration; required, when; signature requirements; registration, contents.

Before conducting home inspections in this state and in each even-numbered year, a home inspector shall register with the Secretary of State. If the home inspector is an individual, the home inspector shall sign such registration. If the home inspector is a firm, partnership, corporation, company, association, limited liability company, or other legal entity, an officer or agent of the home inspector shall sign such registration. Such registration shall include:

(1) The name of the home inspector if the home inspector is an individual or the name of the legal entity under which such home inspector proposes to register and transact business in this state;

(2) The address of the home office of the home inspector;

(3) The name and address of the agent for service of process on the home inspector; and

(4) Any national certification relating to home inspection currently held by the home inspector.

Source: Laws 2021, LB423, § 2.
Operative date January 1, 2023.

76-3603 Fee; certificate of insurance.

At the time of registration pursuant to section 76-3602, a home inspector shall:

(1) Pay a registration fee to the Secretary of State. The Secretary of State shall set such registration fee in an amount sufficient to defray the administrative costs of registration but not to exceed three hundred dollars. The Secretary

of State shall remit such registration fee to the State Treasurer for credit to the Secretary of State Cash Fund; and

(2) Provide to the Secretary of State a certificate of insurance evidencing coverage in an amount of not less than two hundred fifty thousand dollars for general liability.

Source: Laws 2021, LB423, § 3.
Operative date January 1, 2023.

76-3604 Required information; report changes.

A home inspector shall report a change in information required by section 76-3602 or 76-3603 within thirty business days of such change.

Source: Laws 2021, LB423, § 4.
Operative date January 1, 2023.

76-3605 Violation; penalty.

Any violation of sections 76-3602 to 76-3604 shall be a Class IV misdemeanor.

Source: Laws 2021, LB423, § 5.
Operative date January 1, 2023.

76-3606 Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations to carry out sections 76-3601 to 76-3606.

Source: Laws 2021, LB423, § 6.
Operative date January 1, 2023.

CHAPTER 77
REVENUE AND TAXATION

Article.

Article.
50. Tax Equalization and Review Commission Act. 77-5004 to 77-5023.
52. Beginning Farmer Tax Credit Act. 77-5203 to 77-5212.
56. Tax Amnesty Program. 77-5601.
57. Nebraska Advantage Act. 77-5705 to 77-5735.
58. Nebraska Advantage Research and Development Act. 77-5807.
59. Nebraska Advantage Microenterprise Tax Credit Act. 77-5903 to 77-5907.
62. Nameplate Capacity Tax. 77-6202, 77-6203.
63. Angel Investment Tax Credit Act. 77-6306.
64. Qualified Judgment Payment Act. 77-6401 to 77-6406.
65. Key Employer and Jobs Retention Act. 77-6501 to 77-6523.
66. Renewable Chemical Production Tax Credit Act. 77-6601 to 77-6611.
67. Nebraska Property Tax Incentive Act. 77-6701 to 77-6706.
68. ImagiNE Nebraska Act. 77-6801 to 77-6843.
69. Urban Redevelopment Act. 77-6901 to 77-6928.
70. Nebraska Higher Blend Tax Credit Act. 77-7001 to 77-7008.

ARTICLE 1
DEFINITIONS

Section
77-103. Real property, defined.
77-117. Improvements on leased land, defined.
77-118. Nebraska adjusted basis, defined; trade in of property; how treated.

77-103 Real property, defined.

Real property shall mean:

(1) All land;

(2) All buildings, improvements, and fixtures, except trade fixtures;

(3) All electric generation, transmission, distribution, and street lighting structures or facilities owned by a political subdivision of the state;

(4) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;

(5) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases; and

(6) All privileges pertaining to real property described in subdivisions (1) through (5) of this section.

Source: Laws 1903, c. 73, § 1, p. 389; R.S.1913, § 6289; Laws 1921, c. 133, art. I, § 2, p. 545; C.S.1922, § 5809; C.S.1929, § 77-102; R.S.1943, § 77-103; Laws 1951, c. 257, § 1, p. 881; Laws 1961, c. 372, § 1, p. 1147; Laws 1969, c. 638, § 1, p. 2551; Laws 1989, Spec. Sess., LB 1, § 1; Laws 1991, LB 829, § 5; Laws 1992, LB 1063, § 44; Laws 1992, Second Spec. Sess., LB 1, § 43; Laws 1997, LB 270, § 3; Laws 2007, LB334, § 13; Laws 2019, LB218, § 1.

77-117 Improvements on leased land, defined.

Improvements on leased land shall mean any item of real property defined in subdivisions (2) through (5) of section 77-103 which is located on land owned by a person other than the owner of the item.

Source: Laws 1992, LB 1063, § 45; Laws 1992, Second Spec. Sess., LB 1, § 44; Laws 1997, LB 270, § 5; Laws 2019, LB218, § 2.

77-118 Nebraska adjusted basis, defined; trade in of property; how treated.

(1) Nebraska adjusted basis shall mean the adjusted basis of property as determined under the Internal Revenue Code increased by the total amount allowed under the code for depreciation or amortization or pursuant to an election to expense depreciable property under section 179 of the code.

(2) For purchases of depreciable personal property occurring on or after January 1, 2018, if similar personal property is traded in as part of the payment for the newly acquired property, the Nebraska adjusted basis shall be the remaining federal tax basis of the property traded in, plus the additional amount that was paid by the taxpayer for the newly acquired property.

Source: Laws 1992, LB 1063, § 47; Laws 1992, Second Spec. Sess., LB 1, § 46; Laws 1995, LB 574, § 63; Laws 2018, LB1089, § 1; Laws 2019, LB663, § 1.

ARTICLE 2

PROPERTY TAXABLE, EXEMPTIONS, LIENS

Section

77-201 Property taxable; valuation; classification.

(1) Except as provided in subsections (2) through (4) of this section, all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value.

(2) Agricultural land and horticultural land as defined in section 77-1359 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at seventy-five percent of its actual value, except that for school district taxes levied to pay the principal and interest on bonds that are approved by a vote of the people on or after January 1, 2022, such land shall be valued at fifty percent of its actual value.

(3) Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special valuation as defined in

section 77-1343, except that for school district taxes levied to pay the principal and interest on bonds that are approved by a vote of the people on or after January 1, 2022, such land shall be valued at fifty percent of its special valuation as defined in section 77-1343.

(4) Historically significant real property which meets the qualifications for historic rehabilitation valuation under sections 77-1385 to 77-1394 shall be valued for taxation as provided in such sections.

(5) Tangible personal property, not including motor vehicles, trailers, and semitrailers registered for operation on the highways of this state, shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at its net book value. Tangible personal property transferred as a gift or devise or as part of a transaction which is not a purchase shall be subject to taxation based upon the date the property was acquired by the previous owner and at the previous owner's Nebraska adjusted basis. Tangible personal property acquired as replacement property for converted property shall be subject to taxation based upon the date the converted property was acquired and at the Nebraska adjusted basis of the converted property unless insurance proceeds are payable by reason of the conversion. For purposes of this subsection, (a) converted property means tangible personal property which is compulsorily or involuntarily converted as a result of its destruction in whole or in part, theft, seizure, requisition, or condemnation, or the threat or imminence thereof, and no gain or loss is recognized for federal or state income tax purposes by the holder of the property as a result of the conversion and (b) replacement property means tangible personal property acquired within two years after the close of the calendar year in which tangible personal property was converted and which is, except for date of construction or manufacture, substantially the same as the converted property.

Source: Laws 1903, c. 73, § 12, p. 390; R.S.1913, § 6300; Laws 1921, c. 133, art. II, § 1, p. 546; C.S.1922, § 5820; C.S.1929, § 77-201; Laws 1939, c. 102, § 1, p. 461; C.S.Supp.,1941, § 77-201; R.S. 1943, § 77-201; Laws 1953, c. 265, § 1, p. 877; Laws 1955, c. 289, § 2, p. 918; Laws 1957, c. 320, § 2, p. 1138; Laws 1959, c. 353, § 1, p. 1244; Laws 1979, LB 187, § 191; Laws 1985, LB 30, § 2; Laws 1985, LB 271, § 2; Laws 1986, LB 816, § 1; Laws 1989, LB 361, § 5; Laws 1991, LB 404, § 2; Laws 1991, LB 320, § 2; Laws 1992, LB 1063, § 52; Laws 1992, Second Spec. Sess., LB 1, § 50; Laws 1997, LB 269, § 34; Laws 1997, LB 270, § 11; Laws 1997, LB 271, § 38; Laws 2004, LB 973, § 6; Laws 2005, LB 66, § 11; Laws 2006, LB 808, § 24; Laws 2006, LB 968, § 2; Laws 2007, LB166, § 3; Laws 2009, LB166, § 4; Laws 2016, LB775, § 2; Laws 2021, LB2, § 1.

77-202 Property taxable; exemptions enumerated.

(1) The following property shall be exempt from property taxes:

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision:

(i) Property of the state and its governmental subdivisions means (A) property held in fee title by the state or a governmental subdivision or (B) property

beneficially owned by the state or a governmental subdivision in that it is used for a public purpose and is being acquired under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of legal title to the property to the state or a governmental subdivision upon payment of all amounts due thereunder. If the property to be beneficially owned by a governmental subdivision has a total acquisition cost that exceeds the threshold amount or will be used as the site of a public building with a total estimated construction cost that exceeds the threshold amount, then such property shall qualify for an exemption under this section only if the question of acquiring such property or constructing such public building has been submitted at a primary, general, or special election held within the governmental subdivision and has been approved by the voters of the governmental subdivision. For purposes of this subdivision, threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental subdivision that will beneficially own the property as of the end of the governmental subdivision's prior fiscal year; and

(ii) Public purpose means use of the property (A) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (B) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose;

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

(c) Property owned by and used exclusively for agricultural and horticultural societies;

(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii)

used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization includes an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons and a fraternal benefit society organized and licensed under sections 44-1072 to 44-10,109; and

(e) Household goods and personal effects not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the valuation of land.

(3) Tangible personal property which is not depreciable tangible personal property as defined in section 77-119 shall be exempt from property tax.

(4) Motor vehicles, trailers, and semitrailers required to be registered for operation on the highways of this state shall be exempt from payment of property taxes.

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or section 77-5209.02 shall be exempt from the personal property tax.

(7) Livestock shall be exempt from the personal property tax.

(8) Any personal property exempt pursuant to the Nebraska Advantage Act or the ImagiNE Nebraska Act shall be exempt from the personal property tax.

(9) Any depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property. Any depreciable tangible personal property used directly in the generation of electricity using solar, biomass, or landfill gas as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property if such depreciable tangible personal property was installed on or after January 1, 2016, and has a nameplate capacity of one hundred kilowatts or more. Depreciable tangible personal property used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source includes, but is not limited to, wind turbines, rotors and blades, towers, solar panels, trackers, generating

equipment, transmission components, substations, supporting structures or racks, inverters, and other system components such as wiring, control systems, switchgears, and generator step-up transformers.

(10) Any tangible personal property that is acquired by a person operating a data center located in this state, that is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside this state by the person operating a data center shall be exempt from the personal property tax. Such exemption extends to keeping, retaining, or exercising any right or power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state. For purposes of this subsection, data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

(11) For tax years prior to tax year 2020, each person who owns property required to be reported to the county assessor under section 77-1201 shall be allowed an exemption amount as provided in the Personal Property Tax Relief Act. For tax years prior to tax year 2020, each person who owns property required to be valued by the state as provided in section 77-601, 77-682, 77-801, or 77-1248 shall be allowed a compensating exemption factor as provided in the Personal Property Tax Relief Act.

Source: Laws 1903, c. 73, § 13, p. 390; R.S.1913, § 6301; Laws 1921, c. 133, art. II, § 2, p. 547; C.S.1922, § 5821; C.S.1929, § 77-202; R.S.1943, § 77-202; Laws 1955, c. 290, § 1, p. 921; Laws 1965, c. 468, § 1, p. 1514; Laws 1965, c. 469, § 1, p. 1516; Laws 1967, c. 494, § 1, p. 1685; Laws 1967, c. 495, § 1, p. 1686; Laws 1971, LB 945, § 2; Laws 1975, LB 530, § 3; Laws 1980, LB 882, § 1; Laws 1980, LB 913, § 1; Laws 1982, LB 383, § 5; Laws 1984, LB 891, § 1; Laws 1985, LB 268, § 1; Laws 1986, LB 732, § 1; Laws 1987, LB 775, § 13; Laws 1988, LB 855, § 3; Laws 1989, Spec. Sess., LB 7, § 2; Laws 1991, LB 829, § 7; Laws 1992, LB 1063, § 53; Laws 1992, Second Spec. Sess., LB 1, § 51; Laws 1994, LB 961, § 7; Laws 1997, LB 271, § 39; Laws 1999, LB 271, § 4; Laws 2002, LB 994, § 10; Laws 2005, LB 312, § 4; Laws 2008, LB1027, § 1; Laws 2010, LB1048, § 11; Laws 2011, LB360, § 2; Laws 2012, LB902, § 1; Laws 2012, LB1080, § 1; Laws 2015, LB259, § 5; Laws 2015, LB414, § 2; Laws 2015, LB424, § 3; Laws 2016, LB775, § 3; Laws 2020, LB1107, § 121.

Cross References

ImagiNE Nebraska Act, see section 77-6801.
Nebraska Advantage Act, see section 77-5701.
Personal Property Tax Relief Act, see section 77-1237.

77-202.01 Property taxable; tax exemptions; application; requirements; waiver of deadline; penalty; lien.

(1) Any organization or society seeking a tax exemption provided in subdivisions (1)(c) and (d) of section 77-202 for any real or tangible personal property, except real property used for cemetery purposes, shall apply for exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is sought on forms prescribed by the Tax Commissioner. Applications that lack an estimated valuation, or any other required information, shall result in the denial of the requested exemption. The county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization on or before March 1 following. Notice that a list of the applications from organizations seeking tax exemption, descriptions of the property, and recommendations of the county assessor are available in the county assessor's office shall be published in a newspaper of general circulation in the county at least ten days prior to consideration of any application by the county board of equalization.

(2) Any organization or society which fails to file an exemption application on or before December 31 may apply on or before June 30 to the county assessor. The organization or society shall also file in writing a request with the county board of equalization for a waiver so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists for the failure to make application on or before December 31. When the waiver is granted, the county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization and shall assess a penalty against the property of ten percent of the tax that would have been assessed had the waiver been denied or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the exemption application missed the December 31 deadline. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

Source: Laws 1963, c. 441, § 1, p. 1460; Laws 1969, c. 639, § 1, p. 2552; Laws 1980, LB 688, § 1; Laws 1984, LB 835, § 2; Laws 1986, LB 817, § 1; Laws 1993, LB 346, § 7; Laws 1993, LB 345, § 4; Laws 1995, LB 490, § 28; Laws 1996, LB 1122, § 1; Laws 1997, LB 270, § 12; Laws 1997, LB 271, § 40; Laws 1999, LB 194, § 10; Laws 1999, LB 271, § 5; Laws 2000, LB 968, § 26; Laws 2007, LB334, § 15; Laws 2021, LB63, § 1; Laws 2021, LB521, § 1.

77-202.03 Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list.

(1) A properly granted exemption of real or tangible personal property, except real property used for cemetery purposes, provided for in subdivisions (1)(c) and (d) of section 77-202 shall continue for a period of four years if the statement of reaffirmation of exemption required by subsection (2) of this section is filed when due. The four-year period shall begin with years evenly divisible by four.

(2) In each intervening year occurring between application years, the organization or society which filed the granted exemption application for the real or tangible personal property, except real property used for cemetery purposes, shall file a statement of reaffirmation of exemption with the county assessor on or before December 31 of the year preceding the year for which the exemption is sought, on forms prescribed by the Tax Commissioner, certifying that the ownership and use of the exempted property has not changed during the year. Any organization or society which misses the December 31 deadline for filing the statement of reaffirmation of exemption may file the statement of reaffirmation of exemption by June 30. Such filing shall maintain the tax-exempt status of the property without further action by the county and regardless of any previous action by the county board of equalization to deny the exemption due to late filing of the statement of reaffirmation of exemption. Upon any such late filing, the county assessor shall assess a penalty against the property of ten percent of the tax that would have been assessed had the statement of reaffirmation of exemption not been filed or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the statement of reaffirmation of exemption is late. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

(3)(a) If any organization or society seeks a tax exemption for any real or tangible personal property acquired on or after January 1 of any year or converted to exempt use on or after January 1 of any year, the organization or society shall make application for exemption on or before July 1 of that year as provided in subsection (1) of section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, except that the exempt use shall be determined as of the date of application and the review by the county board of equalization shall be completed by August 15.

(b) If an organization as described in subdivision (1)(c) or (d) of section 77-202 purchases, between July 1 and the levy date, property that has been granted tax exemption and the property continues to be qualified for a property tax exemption, the purchaser shall on or before November 15 make application for exemption as provided in section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, and the review by the county board of equalization shall be completed by December 15.

(4) In any year, the county assessor or the county board of equalization may cause a review of any exemption to determine whether the exemption is proper. Such a review may be taken even if the ownership or use of the property has not changed from the date of the allowance of the exemption. If it is determined that a change in an exemption is warranted, the procedure for hearing set out in section 77-202.02 shall be followed, except that the published notice shall state that the list provided in the county assessor's office only includes those properties being reviewed. If an exemption is denied, the county board of equalization shall place the property on the tax rolls retroactive to January 1 of that year if on the date of the decision of the county board of equalization the property no longer qualifies for an exemption.

The county board of equalization shall give notice of the assessed value of the real property in the same manner as outlined in section 77-1507, and the procedures for filing a protest shall be the same as those in section 77-1502.

When personal property which was exempt becomes taxable because of lost exemption status, the owner or his or her agent has thirty days after the date of denial to file a personal property return with the county assessor. Upon the expiration of the thirty days for filing a personal property return pursuant to this subsection, the county assessor shall proceed to list and value the personal property and apply the penalty pursuant to section 77-1233.04.

(5) During the month of September of each year, the county board of equalization shall cause to be published in a paper of general circulation in the county a list of all real estate in the county exempt from taxation for that year pursuant to subdivisions (1)(c) and (d) of section 77-202. Such list shall be grouped into categories as provided by the Property Tax Administrator. An electronic copy of the list of real property exemptions and a copy of the proof of publication shall be forwarded to the Property Tax Administrator on or before November 1 of each year.

Source: Laws 1963, c. 441, § 3, p. 1460; Laws 1965, c. 470, § 1, p. 1517; Laws 1969, c. 641, § 1, p. 2554; Laws 1973, LB 114, § 1; Laws 1973, LB 530, § 1; Laws 1976, LB 786, § 1; Laws 1979, LB 17, § 8; Laws 1980, LB 688, § 3; Laws 1981, LB 179, § 3; Laws 1983, LB 494, § 1; Laws 1986, LB 817, § 2; Laws 1989, LB 133, § 1; Laws 1990, LB 919, § 1; Laws 1993, LB 734, § 42; Laws 1995, LB 490, § 30; Laws 1996, LB 1122, § 2; Laws 1997, LB 270, § 14; Laws 1997, LB 271, § 42; Laws 1998, LB 1104, § 6; Laws 1999, LB 194, § 11; Laws 1999, LB 271, § 6; Laws 2000, LB 968, § 28; Laws 2004, LB 973, § 7; Laws 2007, LB166, § 4; Laws 2007, LB334, § 17; Laws 2010, LB708, § 1; Laws 2019, LB512, § 10.

77-202.05 Property taxable; exempt status; Tax Commissioner; forms; prescribe; contents.

The Tax Commissioner shall prescribe forms for distribution to the county assessors on which persons, corporations, and organizations may apply for tax-exempt status for real or tangible personal property. The forms shall include the following information:

(1) Name of owner or owners of the property, and if a corporation, the names of the officers and directors, and place of incorporation;

(2) Legal description of real property and a general description as to class and use of all tangible personal property;

(3) The precise statutory provision under which exempt status for such property is claimed; and

(4) An estimated valuation for the property.

Source: Laws 1963, c. 441, § 5, p. 1461; Laws 1969, c. 643, § 1, p. 2557; Laws 1995, LB 490, § 32; Laws 1997, LB 271, § 44; Laws 2000, LB 968, § 30; Laws 2007, LB334, § 19; Laws 2021, LB521, § 2.

77-202.09 Cemetery organization; exemption; application; procedure; late filing.

Any cemetery organization seeking a tax exemption for any real property used to maintain areas set apart for the interment of human dead shall apply for exemption to the county assessor on forms prescribed by the Tax Commissioner. An application for a tax exemption shall be made on or before December 31 of the year preceding the year for which the exemption is sought. The county assessor shall examine the application and recommend either taxable or exempt to the county board of equalization on or before March 1 following. If a cemetery organization seeks a tax exemption for any real or tangible personal property acquired for or converted to exempt use on or after January 1, the organization shall make application for exemption on or before July 1. The procedure for reviewing the application shall be the same as for other exemptions pursuant to subdivisions (1)(c) and (d) of section 77-202. Any cemetery organization which fails to file on or before December 31 for exemption may apply on or before June 30 pursuant to subsection (2) of section 77-202.01, and the penalty and procedures specified in section 77-202.01 shall apply.

Source: Laws 1997, LB 270, § 16; Laws 1999, LB 271, § 7; Laws 2007, LB334, § 20; Laws 2010, LB708, § 2; Laws 2021, LB63, § 2.

ARTICLE 3

DEPARTMENT OF REVENUE

Section

77-376 Tax Commissioner; examination of financial records; no release of information; sharing of information; confidentiality.

(1) The Tax Commissioner may examine or cause to be examined in his or her behalf, and make memoranda from, any of the financial records of state and local subdivisions, persons, and corporations subject to the tax laws of this state, including the social security numbers of employees of such state and local subdivisions, persons, and corporations. No information shall be released that is not so authorized by existing statutes. Unless otherwise prohibited by law, the Tax Commissioner may share the information examined with the taxing or law enforcement authorities of this state, other states, and the federal government.

(2) The audit and examination selection criteria and standards, the discovery techniques, the design of technological systems to detect fraud and inconsistencies, and all other techniques utilized by the Department of Revenue to discover fraud, misstatements, inconsistencies, underreporting, and tax avoidance shall be confidential information. The department may disclose this information to certain persons to further its enforcement activities and as provided under section 50-1213, but such limited disclosure shall not change the confidential nature of the information.

Source: Laws 1965, c. 459, § 10, p. 1458; R.S.1943, (1976), § 77-329; Laws 1980, LB 834, § 17; Laws 1995, LB 490, § 43; Laws 1999, LB 36, § 10; Laws 2015, LB261, § 6; Laws 2018, LB1089, § 2; Laws 2022, LB1150, § 1.
Operative date April 20, 2022.

77-377.02 Delinquent tax collection; collection agency; fees; remit funds.

(1) Fees for services, reimbursements, or other remuneration to such collection agency shall be based on the amount of tax, penalty, and interest actually collected and shall not be subject to the requirements of section 73-203 or 73-204. Each contract entered into between the Tax Commissioner and the collection agency shall provide for the payment of fees for such services, reimbursements, or other remuneration not in excess of fifty percent of the total amount of delinquent taxes, penalties, and interest actually collected.

(2) All funds collected, less the fees for collection services as provided in the contract, shall be remitted to the Tax Commissioner within forty-five days from the date of collection from a taxpayer. Forms to be used for such remittances shall be prescribed by the Tax Commissioner.

Source: Laws 1981, LB 170, § 2; Laws 2019, LB512, § 11.

77-382 Department; tax expenditure report; prepare; contents.

(1) The department shall prepare a tax expenditure report describing (a) the basic provisions of the Nebraska tax laws, (b) the actual or estimated revenue loss caused by the exemptions, deductions, exclusions, deferrals, credits, and preferential rates in effect on July 1 of each year and allowed under Nebraska's tax structure and in the property tax, (c) the actual or estimated revenue loss caused by failure to impose sales and use tax on services purchased for nonbusiness use, and (d) the elements which make up the tax base for state and local income, including income, sales and use, property, and miscellaneous taxes.

(2) The department shall review the major tax exemptions for which state general funds are used to reduce the impact of revenue lost due to a tax expenditure. The report shall indicate an estimate of the amount of the reduction in revenue resulting from the operation of all tax expenditures. The report shall list each tax expenditure relating to sales and use tax under the following categories:

(a) Agriculture, which shall include a separate listing for the following items: Agricultural machinery; agricultural chemicals; seeds sold to commercial producers; water for irrigation and manufacturing; commercial artificial insemination; mineral oil as dust suppressant; animal grooming; oxygen for use in aquaculture; animal life whose products constitute food for human consumption; and grains;

(b) Business across state lines, which shall include a separate listing for the following items: Property shipped out-of-state; fabrication labor for items to be shipped out-of-state; property to be transported out-of-state; property purchased in other states to be used in Nebraska; aircraft delivery to an out-of-state resident or business; state reciprocal agreements for industrial machinery; and property taxed in another state;

(c) Common carrier and logistics, which shall include a separate listing for the following items: Railroad rolling stock and repair parts and services; common or contract carriers and repair parts and services; common or contract carrier accessories; and common or contract carrier safety equipment;

(d) Consumer goods, which shall include a separate listing for the following items: Motor vehicles and motorboat trade-ins; merchandise trade-ins; certain medical equipment and medicine; newspapers; laundromats; telefloral deliver-

ies; motor vehicle discounts for the disabled; and political campaign fundraisers;

(e) Energy, which shall include a separate listing for the following items: Motor fuels; energy used in industry; energy used in agriculture; aviation fuel; and minerals, oil, and gas severed from real property;

(f) Food, which shall include a separate listing for the following items: Food for home consumption; Supplemental Nutrition Assistance Program; school lunches; meals sold by hospitals; meals sold by institutions at a flat rate; food for the elderly, handicapped, and Supplemental Security Income recipients; and meals sold by churches;

(g) General business, which shall include a separate listing for the following items: Component and ingredient parts; manufacturing machinery; containers; film rentals; molds and dies; syndicated programming; intercompany sales; intercompany leases; sale of a business or farm machinery; and transfer of property in a change of business ownership;

(h) Lodging and shelter, which shall include a separate listing for the following item: Room rentals by certain institutions;

(i) Miscellaneous, which shall include a separate listing for the following items: Cash discounts and coupons; separately stated finance charges; casual sales; lease-to-purchase agreements; and separately stated taxes;

(j) Nonprofits, governments, and exempt entities, which shall include a separate listing for the following items: Purchases by political subdivisions of the state; purchases by churches and nonprofit colleges and medical facilities; purchasing agents for public real estate construction improvements; contractor as purchasing agent for public agencies; Nebraska lottery; admissions to school events; sales on Native American Indian reservations; school-supporting fundraisers; fine art purchases by a museum; purchases by the Nebraska State Fair Board; purchases by the Nebraska Investment Finance Authority and licensees of the State Racing and Gaming Commission; purchases by the United States Government; public records; and sales by religious organizations;

(k) Recent sales tax expenditures, which shall include a separate listing for each sales tax expenditure created by statute or rule and regulation after July 19, 2012;

(l) Services purchased for nonbusiness use, which shall include a separate listing for each such service, including, but not limited to, the following items: Motor vehicle cleaning, maintenance, and repair services; cleaning and repair of clothing; cleaning, maintenance, and repair of other tangible personal property; maintenance, painting, and repair of real property; entertainment admissions; personal care services; lawn care, gardening, and landscaping services; pet-related services; storage and moving services; household utilities; other personal services; taxi, limousine, and other transportation services; legal services; accounting services; other professional services; and other real estate services; and

(m) Telecommunications, which shall include a separate listing for the following items: Telecommunications access charges; prepaid calling arrangements; conference bridging services; and nonvoice data services.

(3) It is the intent of the Legislature that nothing in the Tax Expenditure Reporting Act shall cause the valuation or assessment of any property exempt

from taxation on the basis of its use exclusively for religious, educational, or charitable purposes.

Source: Laws 1979, LB 17, § 4; R.S.Supp.,1979, § 77-356; Laws 1980, LB 834, § 23; Laws 1991, LB 82, § 2; Laws 2012, LB962, § 1; Laws 2013, LB629, § 1; Laws 2014, LB989, § 1; Laws 2021, LB561, § 47.

77-3,110 Department of Revenue Miscellaneous Receipts Fund; created; use; investment.

(1) All funds received pursuant to sections 77-3,109 and 77-3,118 shall be remitted to the State Treasurer for credit to the Department of Revenue Miscellaneous Receipts Fund which is hereby created.

(2) On or before September 1, 2020, the State Treasurer shall transfer fifty-nine thousand five hundred dollars from the College Savings Plan Expense Fund to the Department of Revenue Miscellaneous Receipts Fund.

(3) All money in the Department of Revenue Miscellaneous Receipts Fund shall be administered by the Department of Revenue and shall be used as follows:

(a) Any money transferred to the fund under subsection (2) of this section shall be used by the Department of Revenue to defray the costs incurred to implement Laws 2020, LB1042; and

(b) All other funds shall be used to defray the cost of production of the publications listed in section 77-3,109 or of the listings described in section 77-3,118 and to carry out any administrative responsibilities of the department.

(4) Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Department of Revenue Miscellaneous Receipts Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 1027, § 212; Laws 1993, LB 345, § 10; Laws 1994, LB 1066, § 79; Laws 2009, First Spec. Sess., LB3, § 54; Laws 2020, LB1042, § 1.

Cross References

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

77-3,119 Tax Commissioner; certify population of cities and villages.

(1) The Tax Commissioner shall certify the population of cities and villages to be used for purposes of calculations made pursuant to subdivisions (3)(a) and (b) of section 35-1205, subdivision (1) of section 39-2517, and sections 39-2513 and 77-27,139.02. The Tax Commissioner shall transmit copies of such certification to all interested parties upon request.

(2) The Tax Commissioner shall certify the population of each city and village based upon the most recent federal census figures. The Tax Commissioner shall determine the most recent federal census figures for each city and village by using the most recent federal census figures available from (a) the most recent federal decennial census, (b) the most recent revised certified count by the United States Bureau of the Census, or (c) the most recent federal census figure

of the city or village plus the population of territory annexed as calculated in sections 18-1753 and 18-1754.

(3) The Tax Commissioner may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1994, LB 1127, § 1; Laws 1998, LB 1120, § 26; Laws 2000, LB 968, § 33; Laws 2011, LB383, § 2; Laws 2017, LB113, § 54; Laws 2021, LB509, § 9.

ARTICLE 6

ASSESSMENT AND EQUALIZATION OF RAILROAD PROPERTY

(c) ADJUSTMENT TO VALUE

Section
77-693. Adjustment to value of railroad and car line property; Property Tax Administrator; powers and duties.

(c) ADJUSTMENT TO VALUE

77-693 Adjustment to value of railroad and car line property; Property Tax Administrator; powers and duties.

(1) The Property Tax Administrator in determining the taxable value of railroads and car lines shall determine the following ratios involving railroad and car line property and commercial and industrial property:

(a) The ratio of the taxable value of all commercial and industrial personal property in the state actually subjected to property tax divided by the market value of all commercial and industrial personal property in the state;

(b) The ratio of the taxable value of all commercial and industrial real property in the state actually subjected to property tax divided by the market value of all commercial and industrial real property in the state;

(c) The ratio of the taxable value of railroad personal property to the market value of railroad personal property. The numerator of the ratio shall be the taxable value of railroad personal property. The denominator of the ratio shall be the railroad system value allocated to Nebraska and multiplied by a factor representing the net book value of rail transportation personal property divided by the net book value of total rail transportation property;

(d) The ratio of the taxable value of railroad real property to the market value of railroad real property. The numerator of the ratio shall be the taxable value of railroad real property. The denominator of the ratio shall be the railroad system value allocated to Nebraska and multiplied by a factor representing the net book value of rail transportation real property divided by the net book value of total rail transportation property; and

(e) Similar calculations shall be made for car line taxable properties.

(2) If the ratio of the taxable value of railroad and car line personal or real property exceeds the ratio of the comparable taxable commercial and industrial property by more than five percent, the Property Tax Administrator may adjust the value of such railroad and car line property to the percentage of the comparable taxable commercial and industrial property pursuant to federal statute or Nebraska federal court decisions applicable thereto.

(3) For purposes of this section, commercial and industrial property shall mean all real and personal property which is devoted to commercial or

industrial use other than rail transportation property and land used primarily for agricultural purposes.

(4) For tax years prior to tax year 2020, after the adjustment made pursuant to subsections (1) and (2) of this section, the Property Tax Administrator shall multiply the value of the tangible personal property of each railroad and car line by the compensating exemption factor calculated in section 77-1238.

Source: Laws 1992, LB 719A, § 219; Laws 1995, LB 490, § 86; Laws 2015, LB259, § 6; Laws 2020, LB1107, § 122.

ARTICLE 7

PROPERTY ASSESSMENT DIVISION

Section
77-702. Property Tax Administrator; qualifications; duties.

77-702 Property Tax Administrator; qualifications; duties.

(1) The Governor shall appoint a Property Tax Administrator with the approval of a majority of the members of the Legislature. The Property Tax Administrator shall have experience and training in the fields of taxation and property appraisal and shall meet all the qualifications required for members of the Tax Equalization and Review Commission under subsections (1) and (2) of section 77-5004.

(2) In addition to any duties, powers, or responsibilities otherwise conferred upon the Property Tax Administrator, he or she shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to property taxation. The Property Tax Administrator shall also advise county assessors regarding the administration and assessment of taxable property within the state and measure assessment performance in order to determine the accuracy and uniformity of assessments.

Source: Laws 1999, LB 36, § 22; Laws 2001, LB 465, § 1; Laws 2007, LB334, § 44; Laws 2011, LB210, § 4; Laws 2011, LB384, § 5; Laws 2019, LB512, § 12.

ARTICLE 8

PUBLIC SERVICE ENTITIES

Section
77-801. Public service entity; furnish information; confidentiality; Property Tax Administrator; duties.

77-801 Public service entity; furnish information; confidentiality; Property Tax Administrator; duties.

(1) All public service entities shall, on or before April 15 of each year, furnish a statement specifying such information as may be required by the Property Tax Administrator on forms prescribed by the Tax Commissioner to determine and distribute the entity's total taxable value including the franchise value. All information reported by the public service entities, not available from any other public source, and any memorandum thereof shall be confidential and available to taxing officials only. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such statement. Such extension shall not exceed fifteen days after April 15.

(2) The returns of public service entities shall not be held to be conclusive as to the taxable value of the property, but the Property Tax Administrator shall, from all the information which he or she is able to obtain, find the taxable value of all such property, including tangible property and franchises, and shall assess such property on the same basis as other property is required to be assessed.

(3) The county assessor shall assess all nonoperating property of any public service entity. A public service entity operating within the State of Nebraska shall, on or before January 1 of each year, report to the county assessor of each county in which it has situs all nonoperating property belonging to such entity which is not subject to assessment and assessed by the Property Tax Administrator under section 77-802.

(4) For tax years prior to tax year 2020, the Property Tax Administrator shall multiply the value of the tangible personal property of each public service entity by the compensating exemption factor calculated in section 77-1238.

Source: Laws 1903, c. 73, § 68, p. 408; Laws 1903, c. 73, § 76, p. 411; Laws 1903, c. 73, § 80, p. 412; Laws 1911, c. 104, § 6, p. 373; R.S.1913, §§ 6358, 6366, 6370; Laws 1921, c. 133, art. IX, § 1, p. 586; C.S.1922, § 5890; C.S.1929, § 77-801; R.S.1943, § 77-801; Laws 1981, LB 179, § 8; Laws 1983, LB 353, § 1; Laws 1985, LB 269, § 2; Laws 1995, LB 490, § 87; Laws 1997, LB 270, § 37; Laws 2000, LB 968, § 38; Laws 2004, LB 973, § 13; Laws 2009, LB166, § 7; Laws 2015, LB259, § 7; Laws 2020, LB1107, § 123.

ARTICLE 9

INSURANCE COMPANIES

Section
77-908. Insurance companies; tax on gross premiums; rate; exceptions.

77-908 Insurance companies; tax on gross premiums; rate; exceptions.

Every insurance company organized under the stock, mutual, assessment, or reciprocal plan, except fraternal benefit societies, which is transacting business in this state shall, on or before March 1 of each year, pay a tax to the director of one percent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state, except that (1) for group sickness and accident insurance the rate of such tax shall be five-tenths of one percent and (2) for property and casualty insurance, excluding individual sickness and accident insurance, the rate of such tax shall be one percent. A captive insurer authorized under the Captive Insurers Act that is transacting business in this state shall, on or before March 1 of each year, pay to the director a tax of one-fourth of one percent of the gross amount of direct writing premiums received by such insurer during the preceding calendar year for business transacted in the state. The taxable premiums shall include premiums paid on the lives of persons residing in this state and premiums paid for risks located in this state whether the insurance was written in this state or not, including that portion of a group premium paid which represents the premium for insurance on Nebraska residents or risks located in Nebraska included within the group when the number of lives in the group exceeds five hundred. The tax shall also apply to premiums received by domestic companies for insurance written on individuals residing outside this state or risks located

outside this state if no comparable tax is paid by the direct writing domestic company to any other appropriate taxing authority. Companies whose scheme of operation contemplates the return of a portion of premiums to policyholders, without such policyholders being claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Community Development Assistance Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the Nebraska Higher Blend Tax Credit Act, and the Affordable Housing Tax Credit Act.

Source: Laws 1951, c. 256, § 2, p. 878; Laws 1984, LB 372, § 13; Laws 1986, LB 1114, § 10; Laws 1989, LB 92, § 275; Laws 1992, LB 1063, § 91; Laws 1992, Second Spec. Sess., LB 1, § 64; Laws 2001, LB 433, § 1; Laws 2002, Second Spec. Sess., LB 9, § 3; Laws 2006, LB 1248, § 83; Laws 2007, LB117, § 53; Laws 2007, LB367, § 5; Laws 2010, LB698, § 3; Laws 2012, LB1128, § 21; Laws 2014, LB191, § 15; Laws 2016, LB884, § 18; Laws 2022, LB1261, § 9.
Operative date July 21, 2022.

Cross References

Affordable Housing Tax Credit Act, see section 77-2501.
Captive Insurers Act, see section 44-8201.
Community Development Assistance Act, see section 13-201.
Nebraska Higher Blend Tax Credit Act, see section 77-7001.
Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.
New Markets Job Growth Investment Act, see section 77-1101.

ARTICLE 11

NEW MARKETS JOB GROWTH INVESTMENT ACT

Section
77-1101. Act, how cited.
77-1101.01. Act; purposes.
77-1102. Definitions, where found.
77-1110. Qualified equity investment, defined.
77-1112.01. 2021 allocation, defined.
77-1112.02. 2021 federal notice, defined.
77-1115. Tax Commissioner; limit tax credit utilization.
77-1116. Qualified community development entity; application; deadline; form; contents; Tax Commissioner; grant or deny; notice of certification; lapse of certification; when.
77-1117. Recapture of tax credit.
77-1120. Qualified community development entity; report to Tax Commissioner; Tax Commissioner; report to Legislature.

77-1101 Act, how cited.

Sections 77-1101 to 77-1120 shall be known and may be cited as the New Markets Job Growth Investment Act.

Source: Laws 2012, LB1128, § 1; Laws 2021, LB682, § 1.

77-1101.01 Act; purposes.

The purposes of the New Markets Job Growth Investment Act are to:

(1) Provide access to capital to small businesses that are not otherwise able to receive affordable financing;

(2) Attract investment dollars from the New Markets Tax Credit Program of the United States Department of the Treasury; and

(3) Ensure Nebraska small businesses have access to capital to retain and add jobs.

Source: Laws 2021, LB682, § 2.

77-1102 Definitions, where found.

For purposes of the New Markets Job Growth Investment Act, the definitions in sections 77-1103 to 77-1112.02 apply.

Source: Laws 2012, LB1128, § 2; Laws 2021, LB682, § 3.

77-1110 Qualified equity investment, defined.

(1) Qualified equity investment means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(a) Is acquired after January 1, 2012, at its original issuance solely in exchange for cash;

(b) Has at least eighty-five percent, or one hundred percent with respect to the 2021 allocation, of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date;

(c) Is designated by the issuer as a qualified equity investment and, with respect to awards of the 2021 allocation pursuant to subsection (6) of section 77-1116, is designated by the issuer as a qualified equity investment under section 45D of the Internal Revenue Code of 1986, as amended; and

(d) Is certified by the Tax Commissioner as not exceeding the limitation contained in section 77-1115.

(2) The term includes any qualified equity investment that does not meet the requirements of subdivision (1)(a) of this section if such investment was a qualified equity investment in the hands of a prior holder.

Source: Laws 2012, LB1128, § 10; Laws 2021, LB682, § 4.

77-1112.01 2021 allocation, defined.

2021 allocation means a monetary amount of qualified equity investments to be awarded by the Tax Commissioner after the 2021 federal notice under the New Markets Job Growth Investment Act that results in a maximum tax credit utilization in any fiscal year of no more than fifteen million dollars of new tax credits.

Source: Laws 2021, LB682, § 5.

77-1112.02 2021 federal notice, defined.

2021 federal notice means the announcement by the Community Development Financial Institutions Fund of the United States Department of the Treasury of allocation awards under a notice of funding availability that was published in the Federal Register in September 2020.

Source: Laws 2021, LB682, § 6.

77-1115 Tax Commissioner; limit tax credit utilization.

The Tax Commissioner shall limit the monetary amount of qualified equity investments permitted under the New Markets Job Growth Investment Act to a level necessary to limit tax credit utilization in any fiscal year at no more than fifteen million dollars of new tax credits, exclusive of tax credits acquired with respect to qualified equity investments issued under the 2021 allocation. Such limitation on qualified equity investments shall be based on the anticipated utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

Source: Laws 2012, LB1128, § 15; Laws 2021, LB682, § 7.

77-1116 Qualified community development entity; application; deadline; form; contents; Tax Commissioner; grant or deny; notice of certification; lapse of certification; when.

(1) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under the New Markets Job Growth Investment Act shall apply to the Tax Commissioner. There shall be no new applications for such designation filed under this section after December 31, 2029. The Tax Commissioner shall begin accepting applications with respect to the 2021 allocation not less than thirty days or more than forty-five days after the 2021 federal notice.

(2) The qualified community development entity shall submit an application on a form that the Tax Commissioner provides that includes:

(a) Evidence of the entity's certification as a qualified community development entity, including evidence of the service area of the entity that includes this state;

(b) A copy of the allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund referred to in section 77-1109;

(c) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund referred to in section 77-1109;

(d) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security;

(e) Identifying information for any taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment;

(f) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment;

(g) A nonrefundable application fee of five thousand dollars; and

(h) With respect to applications for the 2021 allocation, the amount of qualified equity investment authority the applicant agrees to designate as a federal qualified equity investment under section 45D of the Internal Revenue Code of 1986, as amended, including a copy of the screen shot from the Community Development Financial Institutions Fund's Allocation Tracking System of the applicant's remaining federal qualified equity investment authority.

(3) Within thirty days after receipt of a completed application containing the information necessary for the Tax Commissioner to certify a potential qualified equity investment, including the payment of the application fee, the Tax Commissioner shall grant or deny the application in full or in part. If the Tax Commissioner denies any part of the application, the Tax Commissioner shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Tax Commissioner or otherwise completes its application within fifteen days after the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the fifteen-day period, the application remains denied and must be resubmitted in full with a new submission date.

(4) If the application is deemed complete, the Tax Commissioner shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits, subject to the limitations contained in section 77-1115. The Tax Commissioner shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers who are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to section 77-1114, the qualified community development entity shall notify the Tax Commissioner of such change.

(5) Except as provided in subsection (6) of this section, the Tax Commissioner shall certify qualified equity investments in the order applications are received. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Tax Commissioner shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

(6) With respect to applications for the 2021 allocation, the Tax Commissioner shall certify applications by applicants that agree to designate qualified equity investments as federal qualified equity investments in accordance with subdivision (2)(h) of this section in proportionate percentages based upon the ratio of the amount of qualified equity investments requested in an application to be designated as federal qualified equity investments to the total amount of qualified equity investments to be designated as federal qualified equity investments requested in all applications received on the same day.

(7) Once the Tax Commissioner has certified qualified equity investments that, on a cumulative basis, are eligible for the maximum limitation contained in section 77-1115 or the maximum amount of qualified equity investments authorized pursuant to the 2021 allocation, the Tax Commissioner may not certify any more qualified equity investments for that fiscal year. If a pending request cannot be fully certified, the Tax Commissioner shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

(8) Within thirty days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and

receive cash in the amount of the certified amount and, with respect to the 2021 allocation, designate the required amount of qualified equity investment authority as a federal qualified equity investment. The qualified community development entity shall provide the Tax Commissioner with evidence of the receipt of the cash investment within ten business days after receipt and, with respect to the 2021 allocation, provide evidence that the required amount of qualified equity investment authority was designated as a federal qualified equity investment. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within thirty days after receipt of the certification notice and, with respect to the 2021 allocation, make the required federal qualified equity investment designation, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the Tax Commissioner for certification. A certification that lapses reverts back to the Tax Commissioner and may be reissued only in accordance with the application process outlined in this section.

Source: Laws 2012, LB1128, § 16; Laws 2015, LB538, § 9; Laws 2016, LB1022, § 3; Laws 2021, LB682, § 8.

77-1117 Recapture of tax credit.

The Tax Commissioner shall recapture, from the taxpayer that claimed the credit on a return, the tax credit allowed under the New Markets Job Growth Investment Act if:

(1) Any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under section 45D of the Internal Revenue Code of 1986, as amended. In such case the state's recapture shall be proportionate to the federal recapture with respect to such qualified equity investment;

(2) The issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh credit allowance date. In such case recapture shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment; or

(3) The issuer fails to invest and satisfy the requirements of subdivision (1)(b) of section 77-1110 and maintain such level of investment in qualified low-income community investments in Nebraska until the last credit allowance date for the qualified equity investment. For purposes of this section, an investment shall be considered held by an issuer even if the investment has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment within twelve months of the receipt of such capital. With respect to the 2021 allocation, amounts received periodically by a qualified community development entity shall be treated as maintained in qualified low-income community investments if the amounts are reinvested in one or more qualified low-income community investments by the end of the following calendar year. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the sixth credit allowance date, the proceeds of which were used to make the qualified low-income community investment, and the quali-

fied low-income community investment shall be considered held by the issuer through the seventh credit allowance date.

Source: Laws 2012, LB1128, § 17; Laws 2021, LB682, § 9.

77-1120 Qualified community development entity; report to Tax Commissioner; Tax Commissioner; report to Legislature.

(1) A qualified community development entity that has received an allocation of qualified equity investment authority pursuant to the 2021 allocation shall submit an annual report to the Tax Commissioner on or before the last day of February following the second through seventh credit allowance dates. The annual report shall provide documentation as to the qualified community development entity's qualified low-income community investments and include all of the following:

(a) A bank statement evidencing each qualified low-income community investment;

(b) The name, location, and industry of each qualified active low-income community business receiving a qualified low-income community investment; and

(c) The number of jobs created or retained as a result of each qualified low-income community investment.

(2) The Tax Commissioner shall electronically submit a report to the Legislature on or before April 1, 2022, and on or before each April 1 thereafter through April 1, 2028, with respect to the 2021 allocation. The report shall include all of the following:

(a) The name and number of all of the qualified community development entities approved to participate in the 2021 allocation;

(b) The amount of qualified low-income community investments made by the qualified community development entities;

(c) The location of each qualified active low-income community business; and

(d) The number of jobs created or retained as a result of each qualified low-income community investment.

Source: Laws 2021, LB682, § 10.

ARTICLE 12

PERSONAL PROPERTY, WHERE AND HOW LISTED

Section

77-1229 Tangible personal property; form of return; time of filing; exemption; procedure.

(1) Every person required by section 77-1201 to list and value taxable tangible personal property shall list such property upon the forms prescribed by the Tax Commissioner. The forms shall be available from the county assessor and when completed shall be signed by each person or his or her agent and be

filed with the county assessor. The forms shall be filed on or before May 1 of each year.

(2) Any person seeking a personal property exemption pursuant to subsection (2) of section 77-4105, the Nebraska Advantage Act, or the ImagiNE Nebraska Act shall annually file a copy of the forms required pursuant to section 77-4105 or the act with the county assessor in each county in which the person is requesting exemption. The copy shall be filed on or before May 1. Failure to timely file the required forms shall cause the forfeiture of the exemption for the tax year. If a taxpayer pursuant to this subsection also has taxable tangible personal property, such property shall be listed and valued as required under subsection (1) of this section.

Source: Laws 1903, c. 73, § 49, p. 399; Laws 1909, c. 111, § 1, p. 437; R.S.1913, § 6336; C.S.1922, § 5938; C.S.1929, § 77-1425; R.S. 1943, § 77-1229; Laws 1947, c. 250, § 16, p. 793; Laws 1947, c. 251, § 26, p. 819; Laws 1959, c. 355, § 16, p. 1260; Laws 1959, c. 365, § 8, p. 1289; Laws 1959, c. 367, § 1, p. 1296; Laws 1969, c. 665, § 1, p. 2587; Laws 1987, LB 508, § 35; Laws 1992, LB 1063, § 98; Laws 1992, Second Spec. Sess., LB 1, § 71; Laws 1995, LB 490, § 92; Laws 1997, LB 270, § 50; Laws 2000, LB 968, § 43; Laws 2005, LB 312, § 5; Laws 2007, LB334, § 52; Laws 2020, LB1107, § 124.

Cross References

ImagiNE Nebraska Act, see section 77-6801.
Nebraska Advantage Act, see section 77-5701.

77-1238 Exemption from taxation; Property Tax Administrator; duties.

(1) For tax years prior to tax year 2020, every person who is required to list his or her taxable tangible personal property as defined in section 77-105, as required under section 77-1229, shall receive an exemption from taxation for the first ten thousand dollars of valuation of his or her tangible personal property in each tax district as defined in section 77-127 in which a personal property return is required to be filed. Failure to report tangible personal property on the personal property return required by section 77-1229 shall result in a forfeiture of the exemption for any tangible personal property not timely reported for that year.

(2) For tax years prior to tax year 2020, the Property Tax Administrator shall reduce the value of the tangible personal property owned by each railroad, car line company, public service entity, and air carrier by a compensating exemption factor to reflect the exemption allowed in subsection (1) of this section for all other personal property taxpayers. The compensating exemption factor is calculated by multiplying the value of the tangible personal property of the railroad, car line company, public service entity, or air carrier by a fraction, the numerator of which is the total amount of locally assessed tangible personal property that is actually subjected to property tax after the exemption allowed in subsection (1) of this section, and the denominator of which is the net book value of locally assessed tangible personal property prior to the exemptions allowed in subsection (1) of this section.

Source: Laws 2015, LB259, § 2; Laws 2020, LB1107, § 125.

77-1239 Reimbursement for tax revenue lost because of exemption; calculation.

(1) For tax years prior to tax year 2020, reimbursement to taxing subdivisions for tax revenue that will be lost because of the personal property tax exemptions allowed in subsection (1) of section 77-1238 shall be as provided in this subsection. The county assessor and county treasurer shall, on or before November 30 of each year, certify to the Tax Commissioner, on forms prescribed by the Tax Commissioner, the total tax revenue that will be lost to all taxing subdivisions within his or her county from taxes levied and assessed in that year because of the personal property tax exemptions allowed in subsection (1) of section 77-1238. The county assessor and county treasurer may amend the certification to show any change or correction in the total tax revenue that will be lost until May 30 of the next succeeding year. The Tax Commissioner shall, on or before January 1 next following the certification, notify the Director of Administrative Services of the amount so certified to be reimbursed by the state. Reimbursement of the tax revenue lost shall be made to each county according to the certification and shall be distributed in two approximately equal installments on the last business day of February and the last business day of June. The State Treasurer shall, on the business day preceding the last business day of February and the last business day of June, notify the Director of Administrative Services of the amount of funds available in the General Fund to pay the reimbursement. The Director of Administrative Services shall, on the last business day of February and the last business day of June, draw warrants against funds appropriated. Out of the amount received, the county treasurer shall distribute to each of the taxing subdivisions within his or her county the full tax revenue lost by each subdivision, except that one percent of such amount shall be deposited in the county general fund.

(2) For tax years prior to tax year 2020, reimbursement to taxing subdivisions for tax revenue that will be lost because of the compensating exemption factor in subsection (2) of section 77-1238 shall be as provided in this subsection. The Property Tax Administrator shall establish the average tax rate that will be used for purposes of reimbursing taxing subdivisions pursuant to this subsection. The average tax rate shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The total valuation that will be lost to all taxing subdivisions within each county because of the compensating exemption factor in subsection (2) of section 77-1238, multiplied by the average tax rate calculated pursuant to this subsection, shall be the tax revenue to be reimbursed to the taxing subdivisions by the state. Reimbursement of the tax revenue lost for public service entities shall be made to each county according to the certification and shall be distributed among the taxing subdivisions within each county in the same proportion as all public service entity taxes levied by the taxing subdivisions. Reimbursement of the tax revenue lost for railroads shall be made to each county according to the certification and shall be distributed among the taxing subdivisions within each county in the same proportion as all railroad taxes levied by taxing subdivisions. Reimbursement of the tax revenue lost for car line companies shall be distributed in the same manner as the taxes collected pursuant to section 77-684. Reimbursement of the tax revenue lost for air carriers shall be distributed in the same manner as the taxes collected pursuant to section 77-1250.

(3) Each taxing subdivision shall, in preparing its annual or biennial budget, take into account the amounts to be received under this section.

Source: Laws 2015, LB259, § 3; Laws 2019, LB512, § 13; Laws 2020, LB1107, § 126.

77-1248 Taxation of air carriers; taxable value; allocation; Property Tax Administrator; duties.

(1) The Property Tax Administrator shall ascertain from the reports made and from any other information obtained by him or her the taxable value of the flight equipment of air carriers and the proportion allocated to this state for the purposes of taxation as provided in section 77-1245.

(2)(a) In determining the taxable value of the flight equipment of air carriers pursuant to subsection (1) of this section, the Property Tax Administrator shall determine the following ratios:

(i) The ratio of the taxable value of all commercial and industrial depreciable tangible personal property in the state actually subjected to property tax to the market value of all commercial and industrial depreciable tangible personal property in the state; and

(ii) The ratio of the taxable value of flight equipment of air carriers to the market value of flight equipment of air carriers.

(b) If the ratio of the taxable value of flight equipment of air carriers exceeds the ratio of the taxable value of commercial and industrial depreciable tangible personal property by more than five percent, the Property Tax Administrator may adjust the value of such flight equipment of air carriers to the percentage of the taxable commercial and industrial depreciable tangible personal property pursuant to federal law applicable to air carrier transportation property or Nebraska federal court decisions applicable thereto.

(c) For purposes of this subsection, commercial and industrial depreciable tangible personal property means all personal property which is devoted to commercial or industrial use other than flight equipment of air carriers.

(3) For tax years prior to tax year 2020, the Property Tax Administrator shall multiply the valuation of each air carrier by the compensating exemption factor calculated in section 77-1238.

Source: Laws 1949, c. 231, § 2, p. 641; Laws 1969, c. 669, § 1, p. 2591; Laws 1992, LB 1063, § 109; Laws 1992, Second Spec. Sess., LB 1, § 82; Laws 1995, LB 490, § 101; Laws 2015, LB259, § 8; Laws 2015, LB261, § 7; Laws 2020, LB1107, § 127.

ARTICLE 13

ASSESSMENT OF PROPERTY

Section

77-1301 Real property; assessment date; notice of preliminary valuation; destroyed real property; adjustment.

(1) All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., and such assessment shall be used as a basis of taxation until the next assessment unless the property is destroyed real property as defined in section 77-1307, in which case the assessed value for the destroyed real property shall be adjusted as provided in sections 77-1307 to 77-1309.

(2) Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall provide notice of preliminary valuations to real property owners on or before January 15 of each year. Such notice shall be (a) mailed to the taxpayer or (b) published on a website maintained by the county assessor or by the county.

(3) The county assessor shall complete the assessment of real property on or before March 19 of each year, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall complete the assessment of real property on or before March 25 of each year.

Source: Laws 1903, c. 73, § 105, p. 422; R.S.1913, § 6420; Laws 1921, c. 125, § 1, p. 535; C.S.1922, § 5955; Laws 1925, c. 167, § 1, p. 439; C.S.1929, § 77-1601; Laws 1933, c. 130, § 1, p. 507; C.S.Supp.,1941, § 77-1601; R.S.1943, § 77-1301; Laws 1945, c. 188, § 1, p. 581; Laws 1947, c. 251, § 31, p. 823; Laws 1947, c. 255, § 1, p. 835; Laws 1953, c. 270, § 1, p. 891; Laws 1953, c. 269, § 1, p. 889; Laws 1955, c. 288, § 19, p. 913; Laws 1959, c. 355, § 20, p. 1263; Laws 1959, c. 370, § 1, p. 1301; Laws 1963, c. 450, § 1, p. 1474; Laws 1980, LB 742, § 1; Laws 1984, LB 833, § 1; Laws 1987, LB 508, § 36; Laws 1992, LB 1063, § 114; Laws 1992, Second Spec. Sess., LB 1, § 87; Laws 1997, LB 270, § 63; Laws 1999, LB 194, § 15; Laws 2004, LB 973, § 18; Laws 2011, LB384, § 6; Laws 2019, LB512, § 14.

77-1307 Destroyed real property; legislative findings and declarations; terms, defined.

(1) The Legislature finds and declares that fires, earthquakes, floods, and tornadoes occur with enough frequency in this state that provision should be made to grant property tax relief to owners of real property adversely affected by such events.

(2) For purposes of sections 77-1307 to 77-1309:

(a) Calamity means a disastrous event, including, but not limited to, a fire, an earthquake, a flood, a tornado, or other natural event which significantly affects the assessed value of real property;

(b) Destroyed real property means real property that suffers significant property damage as a result of a calamity occurring on or after January 1, 2019, and before July 1 of the current assessment year. Destroyed real property

does not include property suffering significant property damage that is caused by the owner of the property; and

(c) Significant property damage means:

(i) Damage to an improvement exceeding twenty percent of the improvement's assessed value in the current tax year as determined by the county assessor;

(ii) Damage to land exceeding twenty percent of a parcel's assessed land value in the current tax year as determined by the county assessor; or

(iii) Damage exceeding twenty percent of the property's assessed value in the current tax year as determined by the county assessor if (A) such property is located in an area that has been declared a disaster area by the Governor and (B) a housing inspector or health inspector has determined that the property is uninhabitable or unlivable.

Source: Laws 2019, LB512, § 15.

77-1308 Destroyed real property; property owner; file report; form; county board of equalization; duties.

(1) If real property becomes destroyed real property during the current assessment year, the property owner shall file a report of the destroyed real property with the county assessor and county clerk of the county in which the property is located on or before July 15 of the current assessment year. The report of destroyed real property shall be made on a form prescribed by the Tax Commissioner.

(2) If the destroyed real property was a mobile home that was moved pursuant to section 77-3708 and required to pay an accelerated tax pursuant to section 77-1725.01, the property owner shall report the destroyed real property on or before July 15 in the same manner as other real property. The property owner may make a request for refund of the accelerated tax paid pursuant to section 77-1734.01 for any portion of value reduced by the county board of equalization pursuant to section 77-1309.

(3) The county board of equalization shall consider any report of destroyed real property received pursuant to this section, and the assessment of such property shall be made by the county board of equalization in accordance with section 77-1309. After county board of equalization action pursuant to section 77-1309, the county assessor shall correct the current year's assessment roll as provided in section 77-1613.02.

Source: Laws 2019, LB512, § 16.

77-1309 Destroyed real property; county board of equalization; adjust assessed valuation; notice; protests; filing; decision; appeal.

(1) If the county board of equalization receives a report of destroyed real property pursuant to section 77-1308, the county board of equalization shall adjust the assessed value of the destroyed real property to its assessed value on the date it suffers significant property damage.

(2) The county board of equalization may meet on or after June 1 and on or before July 25, or on or before August 10 if the board has adopted a resolution to extend the deadline for hearing protests under section 77-1502, for the purpose of considering the assessed value of destroyed real property pursuant to this section. Any action of the county board of equalization which changes

the assessed value of destroyed real property pursuant to this section shall be for the current assessment year only.

(3) The county board of equalization shall give notice of the assessed value of the destroyed real property to the record owner or agent at his or her last-known address. Protests of the assessed value proposed for destroyed real property pursuant to this section shall be filed with the county board of equalization within thirty days after the mailing of the notice. All provisions of section 77-1502 except dates for filing a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall issue its decision on the protest within thirty days after the filing of the protest. Within seven days after the county board of equalization's final decision, the county clerk shall mail to the protester written notice of the decision. The notice shall contain a statement advising the protester that a report of the decision is available at the county clerk's or county assessor's office, whichever is appropriate.

(4) The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission within thirty days after the board's final decision.

Source: Laws 2019, LB512, § 17.

77-1344 Agricultural or horticultural land; special valuation; when applicable.

(1) Agricultural or horticultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed as provided in subsection (3) of section 77-201 if the land meets the qualifications of this subsection and an application for such special valuation is filed and approved pursuant to section 77-1345. In order for the land to qualify for special valuation, all of the following criteria shall be met: (a) The land must be located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land must be agricultural or horticultural land. If the land consists of five contiguous acres or less, the owner or lessee of the land must also provide an Internal Revenue Service Schedule F documenting a profit or loss from farming for two out of the last three years in order for such land to qualify for special valuation.

(2) Special valuation may be applicable to agricultural or horticultural land included within the corporate boundaries of a city or village if:

(a) The land is subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act and the governing body of the city or village approves the agreement creating the easement;

(b) The land is subject to air installation compatible use zone regulations; or

(c) The land is within a flood plain.

(3) The eligibility of land for the special valuation provisions of this section shall be determined each year as of January 1. If the land so qualified becomes disqualified on or before December 31 of that year, it shall continue to receive the special valuation until January 1 of the year following.

(4) The special valuation placed on such land by the county assessor under this section shall be subject to equalization by the county board of equalization and the Tax Equalization and Review Commission.

Source: Laws 1974, LB 359, § 2; Laws 1983, LB 26, § 2; Laws 1985, LB 271, § 16; Laws 1989, LB 361, § 10; Laws 1991, LB 320, § 5; Laws 1996, LB 934, § 2; Laws 1996, LB 1039, § 1; Laws 1997, LB 270, § 76; Laws 1998, LB 611, § 3; Laws 2000, LB 968, § 49; Laws 2001, LB 170, § 10; Laws 2004, LB 973, § 26; Laws 2005, LB 261, § 5; Laws 2006, LB 808, § 28; Laws 2007, LB166, § 6; Laws 2009, LB166, § 10; Laws 2019, LB185, § 1; Laws 2021, LB9, § 2.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

77-1347 Agricultural or horticultural lands; special valuation; disqualification.

Upon approval of an application, the county assessor shall value the land as provided in section 77-1344 until the land becomes disqualified for such valuation by:

(1) Written notification by the applicant or his or her successor in interest to the county assessor to remove such special valuation;

(2) Except as provided in subsection (2) of section 77-1344, inclusion of the land within the corporate boundaries of any sanitary and improvement district, city, or village;

(3) The land no longer qualifying as agricultural or horticultural land; or

(4) For land that consists of five contiguous acres or less, the owner or lessee of the land not being able to provide an Internal Revenue Service Schedule F documenting a profit or loss from farming for two out of the last three years.

Source: Laws 1974, LB 359, § 5; Laws 1983, LB 26, § 4; Laws 1985, LB 271, § 19; Laws 1989, LB 361, § 12; Laws 2000, LB 968, § 53; Laws 2001, LB 170, § 11; Laws 2002, LB 994, § 18; Laws 2005, LB 263, § 12; Laws 2006, LB 808, § 31; Laws 2010, LB806, § 1; Laws 2019, LB185, § 2.

77-1363 Agricultural and horticultural land; classes and subclasses.

Agricultural land and horticultural land shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. Land capability groups shall be Natural Resources Conservation Service specific to the applied use and not all based on a dryland farming criterion. County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county

assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.

Source: Laws 1985, LB 271, § 8; Laws 1988, LB 1207, § 5; Laws 1989, LB 361, § 17; Laws 1991, LB 320, § 9; Laws 1994, LB 902, § 19; Laws 1995, LB 490, § 139; Laws 1997, LB 270, § 81; Laws 1999, LB 403, § 7; Laws 2001, LB 170, § 15; Laws 2004, LB 973, § 30; Laws 2006, LB 808, § 36; Laws 2006, LB 1115, § 31; Laws 2010, LB877, § 3; Laws 2019, LB372, § 1.

ARTICLE 14

ACHIEVING A BETTER LIFE EXPERIENCE PROGRAM

Section
77-1403. Account owner; designated beneficiary; death of designated beneficiary; transfer of account balances; notice regarding potential tax consequences; state claim or recovery; when prohibited.

77-1403 Account owner; designated beneficiary; death of designated beneficiary; transfer of account balances; notice regarding potential tax consequences; state claim or recovery; when prohibited.

(1) Unless otherwise permitted under section 529A, the owner of an account shall be the designated beneficiary of the account, except that if the designated beneficiary of the account is a minor or has a custodian or other fiduciary appointed for the purposes of managing such beneficiary's financial affairs, a custodian or fiduciary for such designated beneficiary may serve as the account owner if such form of ownership is permitted or not prohibited under section 529A.

(2) Unless otherwise permitted under section 529A, the designated beneficiary of an account shall be a resident of the state or of a contracting state. The State Treasurer shall determine residency of Nebraska residents for such purpose in such manner as may be required or permissible under section 529A or, in the absence of any guidance under section 529A, by such other means as the State Treasurer shall consider advisable for purposes of satisfying the requirements of section 529A.

(3) To the extent permitted by federal law, upon the death of a designated beneficiary of an account, the owner of the account or the personal representative of the designated beneficiary may have the balance of the account transferred to another account under the program specified by the owner of the account, the designated beneficiary, or the estate of the designated beneficiary.

(4) At the time an account is established under the program and prior to any transfer pursuant to subsection (3) of this section, the State Treasurer shall notify the owner of the account, the designated beneficiary, and the estate of the designated beneficiary, if applicable, of the potential tax consequences of transferring funds pursuant to subsection (3) of this section.

(5) Upon the death of a designated beneficiary and after the Department of Health and Human Services has received approval from the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services:

(a) The state shall not seek recovery of any amount remaining in the account of the designated beneficiary for any amount of medical assistance received by the designated beneficiary or his or her spouse or dependent under the medical

assistance program pursuant to the Medical Assistance Act after the establishment of the account; and

(b) The state shall not file a claim for the payment under subdivision (f) of section 529A of the Internal Revenue Code, as amended.

Source: Laws 2015, LB591, § 3; Laws 2020, LB705, § 1.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 15
EQUALIZATION BY COUNTY BOARD

Section
77-1502. Board; protests; form; report; notification.
77-1514. Abstract of property assessment rolls; prepared by county assessor; file with Property Tax Administrator.

77-1502 Board; protests; form; report; notification.

(1) The county board of equalization shall meet for the purpose of reviewing and deciding written protests filed pursuant to this section beginning on or after June 1 and ending on or before July 25 of each year. Protests regarding real property shall be signed and filed after the county assessor's completion of the real property assessment roll required by section 77-1315 and on or before June 30. For protests of real property, a protest shall be filed for each parcel. Protests regarding taxable tangible personal property returns filed pursuant to section 77-1229 from January 1 through May 1 shall be signed and filed on or before June 30. The county board in a county with a population of more than one hundred thousand inhabitants based upon the most recent federal decennial census may adopt a resolution to extend the deadline for hearing protests from July 25 to August 10. The resolution must be adopted before July 25 and it will affect the time for hearing protests for that year only. By adopting such resolution, such county waives any right to petition the Tax Equalization and Review Commission for adjustment of a class or subclass of real property under section 77-1504.01 for that year.

(2) Each protest shall be made on a form prescribed by the Tax Commissioner, signed, and filed with the county clerk of the county where the property is assessed. It shall be acceptable for a county to create its own form, including an electronic form, as long as the form captures the information required by this subsection. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made, including the requested valuation, and a description of the property to which the protest applies. If the property is real property, a description adequate to identify each parcel shall be provided. If the property is tangible personal property, a physical description of the property under protest shall be provided. If the protest does not contain or have attached the statement of the reason or reasons for the protest, including the requested valuation, or the applicable description of the property, the protest shall be dismissed by the county board of equalization. Counties may make reasonable efforts to contact protesters who have timely filed a protest but have either filed incomplete information or not used the required form. The protest shall also indicate whether the person signing the protest is an owner of the property or a person authorized to protest on behalf of the owner. If the

person signing the protest is a person authorized to protest on behalf of the owner, such person shall provide the authorization with the protest. If the person signing the protest is not an owner of the property or a person authorized to protest on behalf of the owner, the county clerk shall mail a copy of the protest to the owner of the property at the address to which the property tax statements are mailed.

(3) Beginning January 1, 2014, in counties with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, for a protest regarding real property, each protester shall be afforded the opportunity to meet in person with the county board of equalization or a referee appointed under section 77-1502.01 to provide information relevant to the protested property value.

(4) No hearing of the county board of equalization on a protest filed under this section shall be held before a single commissioner or supervisor.

(5) The county clerk or county assessor shall prepare a separate report on each protest. The report shall include (a) a description adequate to identify the real property or a physical description of the tangible personal property to which the protest applies, (b) any recommendation of the county assessor for action on the protest, (c) if a referee is used, the recommendation of the referee, (d) the date the county board of equalization heard the protest, (e) the decision made by the county board of equalization, (f) the date of the decision, and (g) the date notice of the decision was mailed to the protester. The report shall contain, or have attached to it, a statement, signed by the chairperson of the county board of equalization, describing the basis upon which the board's decision was made. The report shall have attached to it a copy of that portion of the property record file which substantiates calculation of the protested value unless the county assessor certifies to the county board of equalization that a copy is maintained in either electronic or paper form in his or her office. One copy of the report, if prepared by the county clerk, shall be given to the county assessor on or before August 2. The county assessor shall have no authority to make a change in the assessment rolls until there is in his or her possession a report which has been completed in the manner specified in this section. If the county assessor deems a report submitted by the county clerk incomplete, the county assessor shall return the same to the county clerk for proper preparation.

(6) On or before August 2, or on or before August 18 in a county that has adopted a resolution to extend the deadline for hearing protests, the county clerk shall mail to the protester written notice of the board's decision. The notice shall contain a statement advising the protester that a report of the board's decision is available at the county clerk's or county assessor's office, whichever is appropriate. If the protester is not an owner of the property involved in the protest or a person authorized to protest on behalf of the owner, the county clerk shall also mail written notice of the board's decision to the owner of such property at the address to which the property tax statements are mailed.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S. 1943, § 77-1502; Laws 1947, c. 251, § 36, p. 826; Laws 1949, c. 233, § 1, p. 644; Laws 1953, c. 274, § 1, p. 899; Laws 1959, c.

355, § 25, p. 1267; Laws 1959, c. 371, § 1, p. 1307; Laws 1961, c. 377, § 6, p. 1158; Laws 1961, c. 384, § 1, p. 1177; Laws 1972, LB 1342, § 1; Laws 1975, LB 312, § 1; Laws 1984, LB 660, § 2; Laws 1986, LB 174, § 1; Laws 1986, LB 817, § 13; Laws 1987, LB 508, § 44; Laws 1992, LB 1063, § 124; Laws 1992, Second Spec. Sess., LB 1, § 97; Laws 1994, LB 902, § 21; Laws 1995, LB 452, § 23; Laws 1995, LB 490, § 147; Laws 1997, LB 270, § 86; Laws 2003, LB 292, § 12; Laws 2004, LB 973, § 33; Laws 2005, LB 283, § 2; Laws 2005, LB 299, § 1; Laws 2006, LB 808, § 37; Laws 2008, LB965, § 15; Laws 2009, LB166, § 15; Laws 2010, LB877, § 4; Laws 2011, LB384, § 14; Laws 2018, LB885, § 1; Laws 2021, LB291, § 1.

77-1514 Abstract of property assessment rolls; prepared by county assessor; file with Property Tax Administrator.

(1) The county assessor shall prepare an abstract of the property assessment rolls of locally assessed real property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall file the abstract with the Property Tax Administrator on or before March 19, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the real property abstract shall be filed on or before March 25. The abstract shall show the taxable value of real property in the county as determined by the county assessor and any other information as required by the Property Tax Administrator. The Property Tax Administrator, upon written request from the county assessor, may for good cause shown extend the final filing due date for the abstract and the statutory deadlines provided in section 77-5027. The Property Tax Administrator may extend the statutory deadline in section 77-5028 for a county if the deadline is extended for that county. Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall request an extension of the final filing due date by March 22.

(2) For tax years prior to tax year 2020, the county assessor shall prepare an abstract of the property assessment rolls of locally assessed personal property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall electronically file the abstract with the Property Tax Administrator on or before July 20.

Source: Laws 1903, c. 73, § 125, p. 431; R.S.1913, § 6442; C.S.1922, § 5977; C.S.1929, § 77-1707; R.S.1943, § 77-1514; Laws 1945, c. 190, § 1, p. 590; Laws 1947, c. 251, § 39, p. 827; Laws 1959, c. 371, § 4, p. 1309; Laws 1987, LB 508, § 49; Laws 1992, LB 1063, § 129; Laws 1992, Second Spec. Sess., LB 1, § 102; Laws 1994, LB 902, § 24; Laws 1995, LB 452, § 28; Laws 1995, LB 490, § 155; Laws 1997, LB 270, § 91; Laws 1999, LB 194, § 28; Laws 2000, LB 968, § 59; Laws 2004, LB 973, § 37; Laws 2005, LB 15, § 6; Laws 2005, LB 261, § 7; Laws 2007, LB334, § 79; Laws 2011, LB162, § 1; Laws 2011, LB384, § 18; Laws 2015, LB259, § 9; Laws 2020, LB1107, § 128.

ARTICLE 16
LEVY AND TAX LIST

77-1601 County tax levy; by whom made; when; what included; correction of clerical error; procedure.

(1) The county board of equalization shall each year, on or before October 20, levy the necessary taxes for the current year if within the limit of the law. The levy shall include an amount for operation of all functions of county government and shall also include all levies necessary to fund tax requests that are authorized as provided in sections 77-3442 to 77-3444, including requests certified under the Property Tax Request Act.

(2) On or before November 5, the county board of equalization upon its own motion may act to correct a clerical error which has resulted in the calculation of an incorrect levy by any entity with a tax request as provided in sections 77-3442 to 77-3444, including requests certified under the Property Tax Request Act. The county board of equalization shall hold a public hearing to determine what adjustment to the levy is proper, legal, or necessary. Notice shall be provided to the governing body of each political subdivision affected by the error. Notice of the hearing as required by section 84-1411 shall include the following: (a) The time and place of the hearing, (b) the dollar amount at issue, and (c) a statement setting forth the nature of the error.

(3) Upon the conclusion of the hearing, the county board of equalization shall issue a corrected levy if it determines that an error was made in the original levy which warrants correction. The county board of equalization shall then order (a) the county assessor, county clerk, and county treasurer to revise assessment books, unit valuation ledgers, tax statements, and any other tax records to reflect the correction made and (b) the recertification of the information provided to the Property Tax Administrator pursuant to section 77-1613.01.

Source: Laws 1903, c. 73, § 136, p. 436; Laws 1905, c. 111, § 4, p. 513; Laws 1907, c. 101, § 1, p. 352; R.S.1913, § 6456; Laws 1915, c. 109, § 1, p. 257; Laws 1921, c. 136, § 1, p. 599; C.S.1922, § 5979; Laws 1927, c. 176, § 1, p. 514; Laws 1929, c. 181, § 1, p. 639; C.S.1929, § 77-1801; Laws 1931, c. 137, § 1, p. 381; Laws 1933, c. 133, § 1, p. 510; Laws 1935, c. 52, § 1, p. 179; Laws 1937, c. 172, § 1, p. 679; C.S.Supp.,1941, § 77-1801; R.S.1943, § 77-1601; Laws 1947, c. 250, § 30, p. 799; Laws 1947, c. 251, § 40, p. 828; Laws 1949, c. 234, § 1, p. 645; Laws 1953, c. 275, § 1, p. 900; Laws 1965, c. 470, § 1, p. 1517; Laws 1965, c. 477,

§ 2, p. 1538; Laws 1969, c. 656, § 2, p. 2574; Laws 1980, LB 766, § 1; Laws 1992, LB 1063, § 130; Laws 1992, Second Spec. Sess., LB 1, § 103; Laws 1993, LB 734, § 49; Laws 1995, LB 167, § 1; Laws 1995, LB 452, § 29; Laws 1995, LB 490, § 157; Laws 1996, LB 693, § 11; Laws 1996, LB 1085, § 56; Laws 1997, LB 269, § 41; Laws 1998, LB 306, § 23; Laws 2003, LB 191, § 1; Laws 2021, LB644, § 19.

Cross References

Property Tax Request Act, see section 77-1630.

77-1601.02 Transferred to section 77-1632.

77-1630 Property Tax Request Act, how cited.

Sections 77-1630 to 77-1634 shall be known and may be cited as the Property Tax Request Act.

Source: Laws 2021, LB644, § 1.

77-1631 Terms, defined.

For purposes of the Property Tax Request Act:

(1) Allowable growth percentage means a percentage equal to the sum of (a) two percent plus (b) the political subdivision's real growth percentage;

(2) Excess value means an amount equal to the assessed value of the real property included in a tax increment financing project minus the redevelopment project valuation for such real property;

(3) Property tax request means the total amount of property taxes requested to be raised for a political subdivision through the levy imposed pursuant to section 77-1601;

(4) Real growth percentage means the percentage obtained by dividing (a) the political subdivision's real growth value by (b) the political subdivision's total real property valuation from the prior year;

(5) Real growth value means and includes:

(a) The increase in a political subdivision's real property valuation from the prior year to the current year due to (i) improvements to real property as a result of new construction and additions to existing buildings, (ii) any other improvements to real property which increase the value of such property, (iii) annexation of real property by the political subdivision, and (iv) a change in the use of real property; and

(b) The annual increase in the excess value for any tax increment financing project located in the political subdivision;

(6) Redevelopment project valuation has the same meaning as in section 18-2103; and

(7) Tax increment financing project means a redevelopment project as defined in section 18-2103 that is financed through the division of taxes as provided in section 18-2147.

Source: Laws 2021, LB644, § 2.

77-1632 Property tax request; procedure; public hearing; resolution or ordinance; contents.

(1) If the annual assessment of property would result in an increase in the total property taxes levied by a county, city, village, school district, learning community, sanitary and improvement district, natural resources district, educational service unit, or community college, as determined using the previous year's rate of levy, such political subdivision's property tax request for the current year shall be no more than its property tax request in the prior year, and the political subdivision's rate of levy for the current year shall be decreased accordingly when such rate is set by the county board of equalization pursuant to section 77-1601. The governing body of the political subdivision shall pass a resolution or ordinance to set the amount of its property tax request after holding the public hearing required in subsection (3) of this section. If the governing body of a political subdivision seeks to set its property tax request at an amount that exceeds its property tax request in the prior year, it may do so after holding the public hearing required in subsection (3) of this section and by passing a resolution or ordinance that complies with subsection (4) of this section. If any county, city, school district, or community college seeks to increase its property tax request by more than the allowable growth percentage, such political subdivision shall comply with the requirements of section 77-1633 in lieu of the requirements in subsections (3) and (4) of this section.

(2) If the annual assessment of property would result in no change or a decrease in the total property taxes levied by a county, city, village, school district, learning community, sanitary and improvement district, natural resources district, educational service unit, or community college, as determined using the previous year's rate of levy, such political subdivision's property tax request for the current year shall be no more than its property tax request in the prior year, and the political subdivision's rate of levy for the current year shall be adjusted accordingly when such rate is set by the county board of equalization pursuant to section 77-1601. The governing body of the political subdivision shall pass a resolution or ordinance to set the amount of its property tax request after holding the public hearing required in subsection (3) of this section. If the governing body of a political subdivision seeks to set its property tax request at an amount that exceeds its property tax request in the prior year, it may do so after holding the public hearing required in subsection (3) of this section and by passing a resolution or ordinance that complies with subsection (4) of this section. If any county, city, school district, or community college seeks to increase its property tax request by more than the allowable growth percentage, such political subdivision shall comply with the requirements of section 77-1633 in lieu of the requirements in subsections (3) and (4) of this section.

(3) The resolution or ordinance required under this section shall only be passed after a special public hearing called for such purpose is held and after notice is published in a newspaper of general circulation in the area of the political subdivision at least four calendar days prior to the hearing. For purposes of such notice, the four calendar days shall include the day of publication but not the day of hearing. If the political subdivision's total operating budget, not including reserves, does not exceed ten thousand dollars per year or twenty thousand dollars per biennial period, the notice may be posted at the governing body's principal headquarters. The hearing notice shall contain the following information: The certified taxable valuation under section 13-509 for the prior year, the certified taxable valuation under section 13-509

for the current year, and the percentage increase or decrease in such valuations from the prior year to the current year; the dollar amount of the prior year's tax request and the property tax rate that was necessary to fund that tax request; the property tax rate that would be necessary to fund last year's tax request if applied to the current year's valuation; the proposed dollar amount of the tax request for the current year and the property tax rate that will be necessary to fund that tax request; the percentage increase or decrease in the property tax rate from the prior year to the current year; and the percentage increase or decrease in the total operating budget from the prior year to the current year.

(4) Any resolution or ordinance setting a political subdivision's property tax request under this section at an amount that exceeds the political subdivision's property tax request in the prior year shall include, but not be limited to, the following information:

(a) The name of the political subdivision;

(b) The amount of the property tax request;

(c) The following statements:

(i) The total assessed value of property differs from last year's total assessed value by . . . . . percent;

(ii) The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property, would be $. . . . . per $100 of assessed value;

(iii) The (name of political subdivision) proposes to adopt a property tax request that will cause its tax rate to be $. . . . . per $100 of assessed value; and

(iv) Based on the proposed property tax request and changes in other revenue, the total operating budget of (name of political subdivision) will (increase or decrease) last year's budget by . . . . . percent; and

(d) The record vote of the governing body in passing such resolution or ordinance.

(5) Any resolution or ordinance setting a property tax request under this section shall be certified and forwarded to the county clerk on or before October 15 of the year for which the tax request is to apply.

Source: Laws 1996, LB 693, § 10; Laws 1996, LB 1085, § 55; Laws 1997, LB 269, § 43; Laws 1998, LB 306, § 24; Laws 2001, LB 797, § 3; Laws 2006, LB 1024, § 5; Laws 2019, LB103, § 1; Laws 2019, LB212, § 4; R.S.Supp.,2020, § 77-1601.02; Laws 2021, LB528, § 18; Laws 2021, LB644, § 3.

77-1633 Property tax request; increase by more than allowable growth percentage; notice and hearing; resolution or ordinance; requirements; certification; county clerk; county assessor; duties.

(1) For purposes of this section, political subdivision means any county, city, school district, or community college.

(2) If any political subdivision seeks to increase its property tax request by more than the allowable growth percentage, such political subdivision may do so if:

(a) A public hearing is held and notice of such hearing is provided in compliance with subsection (3) of this section; and

(b) The governing body of such political subdivision passes a resolution or an ordinance that complies with subsection (4) of this section.

(3)(a) Each political subdivision within a county that seeks to increase its property tax request by more than the allowable growth percentage shall participate in a joint public hearing. Each such political subdivision shall designate one representative to attend the joint public hearing on behalf of the political subdivision. If a political subdivision includes area in more than one county, the political subdivision shall be deemed to be within the county in which the political subdivision's principal headquarters are located. At such hearing, there shall be no items on the agenda other than discussion on each political subdivision's intent to increase its property tax request by more than the allowable growth percentage.

(b) The joint public hearing shall be held on or after September 17 and prior to September 29 and before any of the participating political subdivisions file their adopted budget statement pursuant to section 13-508.

(c) The joint public hearing shall be held after 6 p.m. local time on the relevant date.

(d) The joint public hearing shall be organized by the county clerk or his or her designee. At the joint public hearing, the representative of each political subdivision shall give a brief presentation on the political subdivision's intent to increase its property tax request by more than the allowable growth percentage and the effect of such request on the political subdivision's budget. The presentation shall include:

(i) The name of the political subdivision;

(ii) The amount of the property tax request; and

(iii) The following statements:

(A) The total assessed value of property differs from last year's total assessed value by . . . . . percent;

(B) The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property, would be $. . . . . per $100 of assessed value;

(C) The (name of political subdivision) proposes to adopt a property tax request that will cause its tax rate to be $. . . . . per $100 of assessed value;

(D) Based on the proposed property tax request and changes in other revenue, the total operating budget of (name of political subdivision) will exceed last year's by . . . . . percent; and

(E) To obtain more information regarding the increase in the property tax request, citizens may contact the (name of political subdivision) at (telephone number and email address of political subdivision).

(e) Any member of the public shall be allowed to speak at the joint public hearing and shall be given a reasonable amount of time to do so.

(f) Notice of the joint public hearing shall be provided:

(i) By sending a postcard to all affected property taxpayers. The postcard shall be sent to the name and address to which the property tax statement is mailed;

(ii) By posting notice of the hearing on the home page of the relevant county's website, except that this requirement shall only apply if the county has a population of more than twenty-five thousand inhabitants; and

(iii) By publishing notice of the hearing in a legal newspaper in or of general circulation in the relevant county.

(g) Each political subdivision that participates in the joint public hearing shall send the information prescribed in subdivision (3)(h) of this section to the county clerk by September 5. The county clerk shall transmit the information to the county assessor no later than September 10. The county clerk shall notify each participating political subdivision of the date, time, and location of the joint public hearing. The county assessor shall send the information required to be included on the postcards pursuant to subdivision (3)(h) of this section to a printing service designated by the county board. The initial cost for printing the postcards shall be paid from the county general fund. Such postcards shall be mailed at least seven calendar days before the joint public hearing. The cost of creating and mailing the postcards, including staff time, materials, and postage, shall be charged proportionately to the political subdivisions participating in the joint public hearing based on the total number of parcels in each participating political subdivision.

(h) The postcard sent under this subsection and the notice posted on the county's website, if required under subdivision (3)(f)(ii) of this section, and published in the newspaper shall include the date, time, and location for the joint public hearing, a listing of and telephone number for each political subdivision that will be participating in the joint public hearing, and the amount of each participating political subdivision's property tax request. The postcard shall also contain the following information:

(i) The following words in capitalized type at the top of the postcard: NOTICE OF PROPOSED TAX INCREASE;

(ii) The name of the county that will hold the joint public hearing, which shall appear directly underneath the capitalized words described in subdivision (3)(h)(i) of this section;

(iii) The following statement: The following political subdivisions are proposing a revenue increase which would result in an overall increase in property taxes in (insert current tax year). THE ACTUAL TAX ON YOUR PROPERTY MAY INCREASE OR DECREASE. This notice contains estimates of the tax on your property as a result of this revenue increase. These estimates are calculated on the basis of the proposed (insert current tax year) data. The actual tax on your property may vary from these estimates.

(iv) The parcel number for the property;

(v) The name of the property owner and the address of the property;

(vi) The property's assessed value in the previous tax year;

(vii) The amount of property taxes due in the previous tax year for each participating political subdivision;

(viii) The property's assessed value for the current tax year;

(ix) The amount of property taxes due for the current tax year for each participating political subdivision;

(x) The change in the amount of property taxes due for each participating political subdivision from the previous tax year to the current tax year; and

(xi) The following statement: To obtain more information regarding the tax increase, citizens may contact the political subdivision at the telephone number provided in this notice.

(4) After the joint public hearing required in subsection (3) of this section, the governing body of each participating political subdivision shall pass an ordinance or resolution to set such political subdivision's property tax request. If the political subdivision is increasing its property tax request over the amount from the prior year, including any increase in excess of the allowable growth percentage, then such ordinance or resolution shall include, but not be limited to, the following information:

(a) The name of the political subdivision;

(b) The amount of the property tax request;

(c) The following statements:

(i) The total assessed value of property differs from last year's total assessed value by . . . . . percent;

(ii) The tax rate which would levy the same amount of property taxes as last year, when multiplied by the new total assessed value of property, would be $. . . . . per $100 of assessed value;

(iii) The (name of political subdivision) proposes to adopt a property tax request that will cause its tax rate to be $. . . . . per $100 of assessed value; and

(iv) Based on the proposed property tax request and changes in other revenue, the total operating budget of (name of political subdivision) will exceed last year's by . . . . . percent; and

(d) The record vote of the governing body in passing such resolution or ordinance.

(5) Any resolution or ordinance setting a property tax request under this section shall be certified and forwarded to the county clerk on or before October 15 of the year for which the tax request is to apply.

(6) The county clerk, or his or her designee, shall prepare a report which shall include (a) the names of the representatives of the political subdivisions participating in the joint public hearing and (b) the name and address of each individual who spoke at the joint public hearing, unless the address requirement is waived to protect the security of the individual, and the name of any organization represented by each such individual. Such report shall be delivered to the political subdivisions participating in the joint public hearing within ten days after such hearing.

Source: Laws 2021, LB644, § 4; Laws 2022, LB927, § 10.
Effective date July 21, 2022.

77-1634 Failure to comply with act; effect.

(1) Except as provided in subsection (2) of this section, any levy which is not in compliance with the Property Tax Request Act and section 77-1601 shall be construed as an unauthorized levy under section 77-1606.

(2) An inadvertent failure to comply with the Property Tax Request Act shall not invalidate a political subdivision's property tax request or constitute an unauthorized levy under section 77-1606. A political subdivision that has complied with the Property Tax Request Act shall not have its property tax request invalidated due to any other political subdivision's failure to comply with the Property Tax Request Act. The failure of a taxpayer to receive a

postcard as required under the act shall not invalidate a political subdivision's property tax request or constitute an unauthorized levy under section 77-1606.

Source: Laws 2021, LB644, § 5; Laws 2022, LB927, § 11.
Effective date July 21, 2022.

ARTICLE 17
COLLECTION OF TAXES

Section

77-1704.01 Collection of taxes; notice; receipt; statement; contents.

(1) The county treasurer shall include with each tax notice to every taxpayer and with each receipt provided to a taxpayer the following information:

(a) The total amount of aid from state sources appropriated to the county and each city, village, and school district in the county;

(b) The net amount of property taxes to be levied by the county and each city, village, school district, and learning community in the county;

(c) For real property, the amount of taxes reflected on the statement that are levied by the county, city, village, school district, learning community, and other subdivisions for the tax year and for the immediately past year on the same parcel;

(d) For real property that has its taxes divided under section 18-2147 as part of a redevelopment project under the Community Development Law, the amount of taxes reflected on the statement that are allocated to the county, city, village, school district, learning community, and other subdivisions, the amount of taxes reflected on the statement that are allocated to the redevelopment project, and a statement explaining that taxes on the real property have been divided as part of a redevelopment project under the Community Development Law; and

(e) For taxes levied for fiscal year 2017-18 on real property within a learning community, statements explaining that the school district levies for learning community member districts are increasing, in part, as a result of the expiration of the learning community common levies, the proceeds of which were distributed directly to school districts, and that the remaining learning community levies fund activities of the learning community.

(2) The necessary form for furnishing the information required by subdivisions (1)(a), (b), and (e) of this section shall be prescribed by the Department of Revenue. The necessary information required by subdivision (1)(a) of this section shall be furnished to the county treasurer by the Department of Revenue prior to October 1 of each year. The form prescribed by the Department of Revenue shall contain the following statement:

THE AMOUNT OF STATE FUNDS SHOWN ABOVE WOULD HAVE BEEN ADDITIONAL PROPERTY TAXES IF NOT ALLOCATED TO THE COUNTY, CITY, VILLAGE, AND SCHOOL DISTRICT BY THE LEGISLATURE.

Source: Laws 1972, LB 674, § 1; Laws 1995, LB 490, § 163; Laws 1997, LB 270, § 98; Laws 1999, LB 881, § 8; Laws 2006, LB 1024, § 9; Laws 2012, LB851, § 2; Laws 2016, LB1067, § 8; Laws 2018, LB874, § 36; Laws 2020, LB1021, § 16.

Cross References

Community Development Law, see section 18-2101.

77-1725.01 Collection of taxes; real property; removal or demolition; public officials; duties; lien on personal property.

Except in any city or village that has adopted a building code with provisions for demolition of unsafe buildings or structures, it shall be the duty of any assessor, sheriff, constable, city council member, and village trustee to at once inform the county treasurer of the removal or demolition of or a levy of attachment upon any item of real property known to him or her. Except for property considered to be destroyed real property as defined in section 77-1307, it shall be the duty of the county treasurer to immediately proceed with the collection of any delinquent or current taxes when such acts become known to him or her in any manner. Except for property considered to be destroyed real property as defined in section 77-1307, the taxes shall be due and collectible, which taxes shall include taxes on all real property then assessed upon which the tax shall be computed on the basis of the last preceding levy, and a distress warrant shall be issued when (1) any person attempts to remove or demolish all or a substantial portion of his or her real property or (2) a levy of attachment is made upon the real property. From the date the taxes are due and collectible, the taxes shall be a first lien upon the personal property of the person to whom assessed until paid.

Source: Laws 1992, LB 1063, § 137; Laws 1992, Second Spec. Sess., LB 1, § 110; Laws 2019, LB512, § 18.

77-1734.01 Refund of tax paid; claim; verification required; county board approval.

(1) In the case of an amended federal income tax return or whenever a person's return is changed or corrected by the Internal Revenue Service or other competent authority that decreases the Nebraska adjusted basis of the person's taxable tangible personal property, the county treasurer shall refund that portion of the tax paid that is in excess of the amount due after the amendment or correction.

(2) In case of payment made of any property taxes or any payments in lieu of taxes with respect to property as a result of a clerical error or honest mistake or misunderstanding, on the part of a county or other political subdivision of the state or any taxpayer, or accelerated tax paid for real property that was later adjusted by the county board of equalization under sections 77-1307 to 77-1309, the county treasurer to whom the tax was paid shall refund that portion of the tax paid as a result of the clerical error or honest mistake or misunderstanding or that portion of the tax paid that is in excess of the amount due after the adjustment under sections 77-1307 to 77-1309. A claim for a refund pursuant to this section shall be made in writing to the county treasurer

to whom the tax was paid within three years after the date the tax was due or within ninety days after filing the amended return or the correction becomes final.

(3) Before the refund is made, the county treasurer shall receive verification from the county assessor or other taxing official that such error or mistake was made, such adjustment was made, or the amended return was filed or the correction made, and the claim for refund shall be submitted to the county board. Upon verification, the county board shall approve the claim. The refund shall be made in the manner prescribed in section 77-1736.06. Such refund shall not have a dispositional effect on any similar refund for another taxpayer. This section may not be used to challenge the valuation of property, the equalization of property, or the constitutionality of a tax.

Source: Laws 1957, c. 336, § 1, p. 1173; Laws 1959, c. 373, § 1, p. 1312; Laws 1961, c. 385, § 1, p. 1179; Laws 1977, LB 245, § 1; Laws 1988, LB 819, § 1; Laws 1989, LB 762, § 2; Laws 1991, LB 829, § 12; Laws 1992, LB 719A, § 174; Laws 1999, LB 194, § 32; Laws 2008, LB965, § 17; Laws 2019, LB512, § 19.

77-1736.06 Property tax refund; procedure.

The following procedure shall apply when making a property tax refund:

(1) Within thirty days of the entry of a final nonappealable order, an unprotested determination of a county assessor, an unappealed decision of a county board of equalization, or other final action requiring a refund of real or personal property taxes paid or, for property valued by the state, within thirty days of a recertification of value by the Property Tax Administrator pursuant to section 77-1775 or 77-1775.01, the county assessor shall determine the amount of refund due the person entitled to the refund, certify that amount to the county treasurer, and send a copy of such certification to the person entitled to the refund. Within thirty days from the date the county assessor certifies the amount of the refund, the county treasurer shall notify each political subdivision, including any school district receiving a distribution pursuant to section 79-1073 and any land bank receiving real property taxes pursuant to subdivision (3)(a) of section 18-3411, of its respective share of the refund, except that for any political subdivision whose share of the refund is two hundred dollars or less, the county board may waive this notice requirement. Notification shall be by first-class mail, postage prepaid, to the last-known address of record of the political subdivision. The county treasurer shall pay the refund from funds in his or her possession belonging to any political subdivision, including any school district receiving a distribution pursuant to section 79-1073 and any land bank receiving real property taxes pursuant to subdivision (3)(a) of section 18-3411, which received any part of the tax or penalty being refunded. If sufficient funds are not available, the county treasurer shall register the refund or portion thereof which remains unpaid as a claim against such political subdivision and shall issue the person entitled to the refund a receipt for the registration of the claim;

(2) The refund of a tax or penalty or the receipt for the registration of a claim made or issued pursuant to this section shall be satisfied in full as soon as practicable. If a receipt for the registration of a claim is given:

(a) The governing body of the political subdivision shall make provisions in its next budget for the amount of such claim; or

(b) If mutually agreed to by the governing body of the political subdivision and the person holding the receipt, such receipt shall be applied to satisfy any tax levied or assessed by that political subdivision which becomes due from the person holding the receipt until the claim is satisfied in full;

(3) The county treasurer shall mail the refund or the receipt by first-class mail, postage prepaid, to the last-known address of the person entitled thereto. Multiple refunds to the same person may be combined into one refund. If a refund is not claimed by June 1 of the year following the year of mailing, the refund shall be canceled and the resultant amount credited to the various funds originally charged;

(4) When the refund involves property valued by the state, the Tax Commissioner shall be authorized to negotiate a settlement of the amount of the refund or claim due pursuant to this section on behalf of the political subdivision from which such refund or claim is due. Any political subdivision which does not agree with the settlement terms as negotiated may reject such terms, and the refund or claim due from the political subdivision then shall be satisfied as set forth in this section as if no such negotiation had occurred;

(5) In the event that the Legislature appropriates state funds to be disbursed for the purposes of satisfying all or any portion of any refund or claim, the Tax Commissioner shall order the county treasurer to disburse such refund amounts directly to the persons entitled to the refund in partial or total satisfaction of such persons' claims. The county treasurer shall disburse such amounts within forty-five days after receipt thereof;

(6) If all or any portion of the refund is reduced by way of settlement or forgiveness by the person entitled to the refund, the proportionate amount of the refund that was paid by an appropriation of state funds shall be reimbursed by the county treasurer to the State Treasurer within forty-five days after receipt of the settlement agreement or receipt of the forgiven refund. The amount so reimbursed shall be credited to the General Fund; and

(7) For any refund or claim due under this section, interest shall accrue on the unpaid balance at the rate of nine percent beginning thirty days after the date the county assessor certifies the amount of refund based upon the final nonappealable order or other action approving the refund.

Source: Laws 1991, LB 829, § 15; Laws 1992, LB 1063, § 138; Laws 1992, Second Spec. Sess., LB 1, § 111; Laws 1993, LB 555, § 1; Laws 1995, LB 490, § 167; Laws 2007, LB334, § 82; Laws 2008, LB965, § 18; Laws 2010, LB1070, § 3; Laws 2013, LB97, § 19; Laws 2016, LB1067, § 9; Laws 2020, LB424, § 19; Laws 2021, LB644, § 20.

77-1776 Overpayment due to clerical error or mistake; return by political subdivision; how treated.

Any political subdivision which has received proceeds from a levy imposed on all taxable property within an entire county which is in excess of that requested by the political subdivision under the Property Tax Request Act as a result of a clerical error or mistake shall, in the fiscal year following receipt, return the excess tax collections, net of the collection fee, to the county. By July 31 of the fiscal year following the receipt of any excess tax collections, the county treasurer shall certify to the political subdivision the amount to be

returned. Such excess tax collections shall be restricted funds in the budget of the county that receives the funds under section 13-518.

Source: Laws 1999, LB 36, § 1; Laws 2021, LB644, § 21.

Cross References

Property Tax Request Act, see section 77-1630.

77-1785 Residential real property; sale; proration of taxes due.

Whenever residential real property is sold, the property taxes due on such real property for the year in which the sale occurred shall be prorated based on the number of days the buyer and seller owned the property during such year, unless the buyer and seller have agreed to a different proration of such property taxes.

Source: Laws 2021, LB466, § 1.

ARTICLE 18

COLLECTION OF DELINQUENT REAL PROPERTY TAXES BY SALE OF REAL PROPERTY

Section

77-1802 Real property taxes; delinquent tax list; notice of sale.

The county treasurer shall, not less than four nor more than six weeks prior to the first Monday of March in each year, make out a list of all real property subject to sale and the amount of all delinquent taxes against each item with an accompanying notice stating that so much of such property described in the list as may be necessary for that purpose will, on the first Monday of March next thereafter, be sold by such county treasurer at public auction at his or her office for the taxes, interest, and costs thereon. In making such list, the county treasurer shall describe the property as it is described on the tax list and shall include the property's parcel number, if any.

Source: Laws 1903, c. 73, § 194, p. 459; R.S.1913, § 6522; C.S.1922, § 6050; Laws 1929, c. 169, § 1, p. 583; C.S.1929, § 77-2002; Laws 1933, c. 136, § 5, p. 519; Laws 1937, c. 167, § 24, p. 655; Laws 1939, c. 98, § 24, p. 442; Laws 1941, c. 157, § 24, p. 626;

C.S.Supp.,1941, § 77-2002; R.S.1943, § 77-1802; Laws 1986, LB 531, § 2; Laws 1992, LB 1063, § 139; Laws 1992, Second Spec. Sess., LB 1, § 112; Laws 2019, LB463, § 1.

77-1807 Real property taxes; delinquent tax sale; how conducted; sale of part; bid by land bank; effect.

(1)(a) This subsection applies until January 1, 2015.

(b) Except as otherwise provided in subdivision (c) of this subsection, the person who offers to pay the amount of taxes due on any real property for the smallest portion of the same shall be the purchaser, and when such person designates the smallest portion of the real property for which he or she will pay the amount of taxes assessed against any such property, the portion thus designated shall be considered an undivided portion.

(c) If a land bank gives an automatically accepted bid for the real property pursuant to section 18-3417, the land bank shall be the purchaser, regardless of the bid of any other person.

(d) If no person bids for a less quantity than the whole and no land bank has given an automatically accepted bid pursuant to section 18-3417, the treasurer may sell any real property to any one who will take the whole and pay the taxes and charges thereon.

(e) If the homestead is listed separately as a homestead, it shall be sold only for the taxes delinquent thereon.

(2)(a) This subsection applies beginning January 1, 2015.

(b) If a land bank gives an automatically accepted bid for real property pursuant to section 18-3417, the land bank shall be the purchaser and no public or private auction shall be held under sections 77-1801 to 77-1863.

(c) If no land bank has given an automatically accepted bid pursuant to section 18-3417, the person who offers to pay the amount of taxes, delinquent interest, and costs due on any real property shall be the purchaser.

(d) The county treasurer shall announce bidding rules at the beginning of the public auction, and such rules shall apply to all bidders throughout the public auction.

(e) The sale, if conducted in a round-robin format, shall be conducted in the following manner:

(i) At the commencement of the sale, a count shall be taken of the number of registered bidders present who want to be eligible to purchase property. Each registered bidder shall only be counted once. If additional registered bidders appear at the sale after the commencement of a round, such registered bidders shall have the opportunity to participate at the end of the next following round, if any, as provided in subdivision (v) of this subdivision;

(ii) Sequentially enumerated tickets shall be placed in a receptacle. The number of tickets in the receptacle for the first round shall equal the count taken in subdivision (i) of this subdivision, and the number of tickets in the receptacle for each subsequent round shall equal the number of the count taken in subdivision (i) of this subdivision plus additional registered bidders as provided in subdivision (v) of this subdivision;

(iii) In a manner determined by the county treasurer, tickets shall be selected from the receptacle by hand for each registered bidder whereby each ticket has

an equal chance of being selected. Tickets shall be selected until there are no tickets remaining in the receptacle;

(iv) The number on the ticket selected for a registered bidder shall represent the order in which a registered bidder may purchase property consisting of one parcel subject to sale from the list per round; and

(v) If property listed remains unsold at the end of a round, a new round shall commence until all property listed is either sold or, if any property listed remains unsold, each registered bidder has consecutively passed on the opportunity to make a purchase. Registered bidders who are not present when it is their turn to purchase property shall be considered to have passed on the opportunity to make a purchase. At the beginning of the second and any subsequent rounds, the county treasurer shall inquire whether there are additional registered bidders. If additional registered bidders are present, tickets for each such bidder shall be placed in a receptacle and selected as provided in subdivisions (ii) through (iv) of this subdivision. The second and any subsequent rounds shall proceed in the same manner and purchase order as the last preceding round, except that any additional registered bidders shall be given the opportunity to purchase at the end of the round in the order designated on their ticket.

(f) Any property remaining unsold upon completion of the public auction shall be sold at a private sale pursuant to section 77-1814.

(g) A bidder shall (i) register with the county treasurer prior to participating in the sale, (ii) provide proof that it maintains a registered agent for service of process with the Secretary of State if the bidder is a foreign corporation, and (iii) pay a twenty-five-dollar registration fee. The fee is not refundable upon redemption.

Source: Laws 1903, c. 73, § 199, p. 461; R.S.1913, § 6527; C.S.1922, § 6055; C.S.1929, § 77-2007; Laws 1937, c. 167, § 11, p. 643; Laws 1939, c. 98, § 11, p. 428; Laws 1941, c. 157, § 11, p. 614; C.S.Supp.,1941, § 77-2007; R.S.1943, § 77-1807; Laws 1992, LB 1063, § 143; Laws 1992, Second Spec. Sess., LB 1, § 116; Laws 2013, LB97, § 21; Laws 2013, LB341, § 1; Laws 2014, LB851, § 9; Laws 2020, LB424, § 20.

77-1810 Real property taxes; delinquent tax sales; purchase by political subdivisions authorized.

(1) Except as otherwise provided in subsection (2) of this section, whenever any real property subject to sale for taxes is within the corporate limits of any city, village, school district, drainage district, or irrigation district, it shall have the right and power through its governing board or body to purchase such real property for the use and benefit and in the name of the city, village, school district, drainage district, or irrigation district as the case may be. The treasurer of the city, village, school district, drainage district, or irrigation district may assign the certificate of purchase by endorsement of his or her name on the back thereof when directed so to do by written order of the governing board.

(2) No such sale shall be made to any city, village, school district, drainage district, or irrigation district by the county treasurer (a) when the real property has been previously sold to the county, but in any such case, the city, village, school district, drainage district, or irrigation district may purchase the tax

certificate held by the county or (b) if a land bank has given an automatically accepted bid on such real property pursuant to section 18-3417.

Source: Laws 1903, c. 73, § 202, p. 462; R.S.1913, § 6530; Laws 1917, c. 118, § 1, p. 292; C.S.1922, § 6058; C.S.1929, § 77-2010; Laws 1937, c. 167, § 35, p. 662; Laws 1939, c. 98, § 35, p. 450; Laws 1941, c. 159, § 1, p. 641; Laws 1941, c. 157, § 35, p. 633; C.S.Supp.,1941, § 77-2010; R.S.1943, § 77-1810; Laws 1992, LB 1063, § 145; Laws 1992, Second Spec. Sess., LB 1, § 118; Laws 2013, LB97, § 23; Laws 2020, LB424, § 21.

77-1824.01 Repealed. Laws 2019, LB463, § 10.

77-1831 Real property taxes; issuance of treasurer's tax deed; notice given by purchaser; contents.

No purchaser at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless such purchaser or assignee, at least three months before applying for the tax deed, serves or causes to be served a notice that states, after the expiration of at least three months from the date of service of such notice, the tax deed will be applied for.

The notice shall include:

(1) The following statement in sixteen-point type: UNLESS YOU ACT YOU WILL LOSE THIS PROPERTY;

(2) The date when the purchaser purchased the real property sold by the county for taxes;

(3) The description of the real property;

(4) In whose name the real property was assessed;

(5) The amount of taxes represented by the tax sale certificate, the year the taxes were levied or assessed, and a statement that subsequent taxes may have been paid and interest may have accrued as of the date the notice is signed by the purchaser; and

(6) The following statements:

(a) That the issuance of a tax deed is subject to the right of redemption under sections 77-1824 to 77-1830;

(b) The right of redemption requires payment to the county treasurer, for the use of such purchaser, or his or her heirs or assigns, the amount of taxes represented by the tax sale certificate for the year the taxes were levied or assessed and any subsequent taxes paid and interest accrued as of the date payment is made to the county treasurer; and

(c) The right of redemption expires at the close of business on the date of application for the tax deed, and a deed may be applied for after the expiration of three months from the date of service of this notice.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1831; Laws 1992, LB 1063, § 157; Laws 1992, Second Spec. Sess., LB 1, § 130; Laws 2012, LB370, § 4; Laws 2013, LB341, § 12; Laws 2019, LB463, § 2.

77-1832 Real property taxes; issuance of treasurer's tax deed; service of notice; upon whom made.

(1) Service of the notice provided by section 77-1831 shall be made by:

(a) Personal or residence service as described in section 25-505.01 upon a person in actual possession or occupancy of the real property and upon the person in whose name the title to the real property appears of record who can be found in this state. If a person in actual possession or occupancy of the real property cannot be served by personal or residence service, service of the notice shall be made upon such person by certified mail service or designated delivery service as described in section 25-505.01, and the notice shall be sent to the address of the property. If the person in whose name the title to the real property appears of record cannot be found in this state or if such person cannot be served by personal or residence service, service of the notice shall be made upon such person by certified mail service or designated delivery service as described in section 25-505.01, and the notice shall be sent to the name and address to which the property tax statement was mailed; and

(b) Certified mail or designated delivery service as described in section 25-505.01 upon every encumbrancer of record found by the title search required in section 77-1833. The notice shall be sent to the encumbrancer's name and address appearing of record as shown in the encumbrance filed with the register of deeds.

(2) Personal or residence service shall be made by the county sheriff of the county where service is made or by a person authorized by section 25-507. The sheriff or other person serving the notice shall be entitled to the statutory fee prescribed in section 33-117.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1832; Laws 1987, LB 93, § 20; Laws 1992, LB 1063, § 158; Laws 1992, Second Spec. Sess., LB 1, § 131; Laws 2003, LB 319, § 1; Laws 2012, LB370, § 5; Laws 2013, LB341, § 13; Laws 2017, LB217, § 7; Laws 2019, LB463, § 3.

77-1833 Real property taxes; issuance of treasurer's tax deed; proof of service; fees.

The service of notice provided by section 77-1832 shall be proved by affidavit. The purchaser or assignee shall also affirm in the affidavit that a title search was conducted by a registered abstracter to determine those persons entitled to notice pursuant to such section. If personal or residence service is used, the receipt or returns provided by the person authorized in subsection (2) of section 77-1832 to carry out such service shall be filed with and accompany the affidavit. If certified mail or designated delivery service is used, the certified mail return receipt or a copy of the signed delivery receipt shall be filed with and accompany the affidavit. The affidavit, a copy of the notice, and a copy of such title search shall be filed with the application for the tax deed pursuant to section 77-1837. For each service of such notice, a fee of one dollar shall be allowed. The amount of such fees shall be noted by the county treasurer in the record opposite the real property described in the notice and shall be collected

by the county treasurer in case of redemption for the benefit of the holder of the certificate.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1833; Laws 1969, c. 645, § 9, p. 2561; Laws 1992, LB 1063, § 159; Laws 1992, Second Spec. Sess., LB 1, § 132; Laws 2003, LB 319, § 2; Laws 2012, LB370, § 6; Laws 2013, LB341, § 14; Laws 2017, LB217, § 8; Laws 2019, LB463, § 4.

77-1834 Real property taxes; issuance of treasurer's tax deed; notice to owner or encumbrancer by publication.

If any person or encumbrancer who is entitled to notice under subsection (1) of section 77-1832 cannot, upon diligent inquiry, be found, the purchaser or his or her assignee shall publish the notice in a newspaper of general circulation in the county which has been designated by the county board in the year publication is required under this section.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1834; Laws 1992, LB 1063, § 160; Laws 1992, Second Spec. Sess., LB 1, § 133; Laws 2003, LB 319, § 3; Laws 2008, LB893, § 1; Laws 2012, LB370, § 7; Laws 2019, LB463, § 5.

77-1835 Real property taxes; issuance of treasurer's tax deed; manner and proof of publication; false affidavit; penalty.

The notice provided by section 77-1834 shall be published three consecutive weeks, the last time not less than three months before applying for the tax deed. Proof of publication shall be made by filing in the county treasurer's office the affidavit of the publisher, manager, or other employee of such newspaper, affirming that to his or her personal knowledge, the notice was published for the time and in the manner provided in this section, setting out a copy of the notice and the date upon which the same was published. The purchaser or assignee shall also file in the county treasurer's office an affidavit affirming that a title search was conducted by a registered abstracter to determine those persons entitled to notice pursuant to section 77-1832 and a copy of such title search. The affidavits, the copy of the notice, and the copy of the title search shall be filed with the application for the tax deed pursuant to section 77-1837. Such documents shall be preserved as a part of the files of the office. Any publisher, manager, or employee of a newspaper knowingly or negligently making a false affidavit regarding any such matters shall be guilty of perjury and shall be punished accordingly. Section 25-520.01 does not apply to publication of notice pursuant to section 77-1834.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1835; Laws 2012, LB370, § 8; Laws 2019, LB463, § 6.

Cross References

Perjury, see section 28-915.

77-1837 Real property taxes; issuance of treasurer's tax deed; when.

(1) At any time within nine months after the expiration of three years after the date of sale of any real estate for taxes or special assessments, if such real estate has not been redeemed, the purchaser or his or her assignee may apply to the county treasurer for a tax deed for the real estate described in such purchaser's or assignee's tax sale certificate. The county treasurer shall execute and deliver a deed of conveyance for the real estate described in such tax sale certificate if he or she has received the following:

(a) The tax sale certificate;

(b) The issuance fee for the tax deed and the fee of the notary public or other officer acknowledging the tax deed, as required under section 77-1823;

(c) For any notice provided pursuant to section 77-1832, the affidavit proving service of notice, the copy of the notice, and the copy of the title search required under section 77-1833; and

(d) For any notice provided by publication pursuant to section 77-1834, the affidavit of the publisher, manager, or other employee of the newspaper, the copy of the notice, the affidavit of the purchaser or assignee, and the copy of the title search required under section 77-1835.

(2) The failure of the county treasurer to issue the deed of conveyance if requested within the timeframe provided in this section shall not impair the validity of such deed if there has otherwise been compliance with sections 77-1801 to 77-1863.

Source: Laws 1903, c. 73, § 217, p. 468; R.S.1913, § 6545; C.S.1922, § 6073; C.S.1929, § 77-2025; R.S.1943, § 77-1837; Laws 1975, LB 78, § 1; Laws 1987, LB 215, § 2; Laws 2001, LB 118, § 1; Laws 2012, LB370, § 9; Laws 2013, LB341, § 16; Laws 2019, LB463, § 7.

77-1837.01 Real property taxes; tax deed proceedings; changes in law not retroactive; exceptions.

(1) Except as otherwise provided in subsections (2) and (3) of this section, the laws in effect on the date of the issuance of a tax sale certificate govern all matters related to tax deed proceedings, including noticing and application, and foreclosure proceedings. Changes in law shall not apply retroactively with regard to the tax sale certificates previously issued.

(2) Tax sale certificates sold and issued between January 1, 2010, and December 31, 2016, shall be governed by the laws and statutes that were in effect on December 31, 2009, with regard to all matters relating to tax deed proceedings, including noticing and application, and foreclosure proceedings.

(3) Tax sale certificates sold and issued between January 1, 2017, and September 7, 2019, shall be governed by the laws and statutes that are in effect on September 7, 2019, with regard to all matters relating to tax deed proceedings, including noticing and application, and foreclosure proceedings.

Source: Laws 2012, LB370, § 10; Laws 2014, LB851, § 10; Laws 2017, LB217, § 9; Laws 2019, LB463, § 8.

ARTICLE 20
INHERITANCE TAX

Section
77-2002. Inheritance tax; property taxable; transfer in contemplation of death.
77-2004. Inheritance tax; rate; transfer to immediate relatives; exemption.
77-2005. Inheritance tax; rate; transfer to remote relatives; exemption.
77-2005.01. Relatives of decedent; computation of inheritance tax.
77-2006. Inheritance tax; rate; other transfers; exemption.
77-2015. Inheritance tax; distribution of proceeds from estate; reports required; contents.
77-2018.02. Inheritance tax; independent proceeding for determination in absence of probate of estate; petition; notice; waiver of notice; notice to Department of Health and Human Services.

77-2002 Inheritance tax; property taxable; transfer in contemplation of death.

(1) Any interest in property whether created or acquired prior or subsequent to August 27, 1951, shall be subject to tax at the rates prescribed by sections 77-2004 to 77-2006, except property exempted by the provisions of Chapter 77, article 20, if it shall be transferred by deed, grant, sale, or gift, in trust or otherwise, and: (a) Made in contemplation of the death of the grantor; (b) intended to take effect in possession or enjoyment, after his or her death; (c) by reason of death, any person shall become beneficially entitled in possession or expectation to any property or income thereof; or (d) held as joint owners or joint tenants by the decedent and any other person in their joint names, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or property, except that when such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or property, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person or, when any property has been acquired by gift, bequest, devise, or inheritance by the decedent and any other person as joint owners or joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint owners or joint tenants.

(2) For the purpose of subsection (1) of this section, if the decedent, within a period of three years ending with the date of his or her death, except in the case of a bona fide sale for an adequate and full consideration for money or money's worth, transferred an interest in property for which a federal gift tax return is required to be filed under the provisions of the Internal Revenue Code, such transfer shall be deemed to have been made in contemplation of death within the meaning of subsection (1) of this section; no such transfer made before such three-year period shall be treated as having been made in contemplation of death in any event.

(3) Proceeds of life insurance receivable by a trustee, of either an inter vivos trust or a testamentary trust, as insurance under policies upon the life of the

decedent shall not be subject to inheritance tax. This subsection shall not apply if the decedent's estate is the beneficiary of the trust.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2002; Laws 1945, c. 198, § 4, p. 604; Laws 1947, c. 263, § 1, p. 853; Laws 1951, c. 267, § 2, p. 899; Laws 1953, c. 282, § 1, p. 913; Laws 1955, c. 299, § 1, p. 935; Laws 1976, LB 585, § 2; Laws 1982, LB 480, § 2; Laws 1995, LB 574, § 66; Laws 2019, LB315, § 1.

77-2004 Inheritance tax; rate; transfer to immediate relatives; exemption.

(1) In the case of a father, mother, grandfather, grandmother, brother, sister, son, daughter, child or children legally adopted as such in conformity with the laws of the state where adopted, any lineal descendant, any lineal descendant legally adopted as such in conformity with the laws of the state where adopted, any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or the spouse or surviving spouse of any such persons, the rate of tax shall be:

(a) For decedents dying prior to January 1, 2023, one percent of the clear market value of the property received by each person in excess of forty thousand dollars; and

(b) For decedents dying on or after January 1, 2023, one percent of the clear market value of the property received by each person in excess of one hundred thousand dollars.

(2) Any interest in property, including any interest acquired in the manner set forth in section 77-2002, which may be valued at a sum less than or equal to the applicable exempt amount under subsection (1) of this section shall not be subject to tax. In addition the homestead allowance, exempt property, and family maintenance allowance shall not be subject to tax. Interests passing to the surviving spouse by will, in the manner set forth in section 77-2002, or in any other manner shall not be subject to tax. Any interest passing to a person described in subsection (1) of this section who is under twenty-two years of age shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2004; Laws 1951, c. 267, § 3, p. 900; Laws 1953, c. 282, § 2, p. 914; Laws 1957, c. 337, § 1, p. 1174; Laws 1965, c. 497, § 1, p. 1585; Laws 1975, LB 481, § 31; Laws 1976, LB 585, § 4; Laws 1977, LB 456, § 1; Laws 1982, LB 480, § 4; Laws 1988, LB 845, § 1; Laws 1997, LB 16, § 1; Laws 2007, LB502, § 1; Laws 2022, LB310, § 1.
Effective date July 21, 2022.

77-2005 Inheritance tax; rate; transfer to remote relatives; exemption.

(1) In the case of an uncle, aunt, niece, or nephew related to the deceased by blood or legal adoption, or other lineal descendant of the same, or the spouse or surviving spouse of any of such persons, the rate of tax shall be:

(a) For decedents dying prior to January 1, 2023, thirteen percent of the clear market value of the property received by each person in excess of fifteen thousand dollars; and

(b) For decedents dying on or after January 1, 2023, eleven percent of the clear market value of the property received by each person in excess of forty thousand dollars.

(2) If the clear market value of the beneficial interest is less than or equal to the applicable exempt amount under subsection (1) of this section, it shall not be subject to tax. In addition, any interest passing to a person described in subsection (1) of this section who is under twenty-two years of age shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2005; Laws 1947, c. 262, § 1, p. 851; Laws 1951, c. 267, § 4, p. 900; Laws 1959, c. 353, § 5, p. 1245; Laws 1965, c. 497, § 2, p. 1586; Laws 1976, LB 585, § 5; Laws 2007, LB502, § 2; Laws 2022, LB310, § 2.
Effective date July 21, 2022.

77-2005.01 Relatives of decedent; computation of inheritance tax.

(1) For the purposes of sections 77-2004 and 77-2005, relatives of the decedent shall include:

(a) Relatives of a former spouse to whom the decedent was married at the time of the death of the former spouse and relatives of a spouse to whom the decedent was married at the time of his or her death; and

(b) Relatives of a spouse or former spouse of the decedent's parent, grandparent, child, sibling, uncle, aunt, niece, or nephew, if the decedent's parent, grandparent, child, sibling, uncle, aunt, niece, or nephew was married to the spouse at the date of death of the decedent or at the date of death of such spouse.

(2) The computation of any tax due pursuant to sections 77-2004, 77-2005, and 77-2006 shall be made without regard to Nebraska inheritance tax apportionment.

Source: Laws 1976, LB 585, § 6; Laws 1977, LB 456, § 2; Laws 2022, LB310, § 3.
Effective date July 21, 2022.

77-2006 Inheritance tax; rate; other transfers; exemption.

(1) In all other cases the rate of tax shall be:

(a) For decedents dying prior to January 1, 2023, eighteen percent of the clear market value of the beneficial interests received by each person in excess of ten thousand dollars; and

(b) For decedents dying on or after January 1, 2023, fifteen percent of the clear market value of the beneficial interests received by each person in excess of twenty-five thousand dollars.

(2) If the clear market value of the beneficial interest is less than or equal to the applicable exempt amount under subsection (1) of this section, it shall not be subject to any tax. In addition, any interest passing to a person who is under twenty-two years of age shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S. 1943, § 77-2006; Laws 1947, c. 262, § 2, p. 851; Laws 1965, c. 497, § 3, p. 1586; Laws 1988, LB 845, § 2; Laws 2007, LB502, § 3; Laws 2022, LB310, § 4.
Effective date July 21, 2022.

77-2015 Inheritance tax; distribution of proceeds from estate; reports required; contents.

Each personal representative of an estate shall, upon the distribution of any proceeds from an estate, submit a report regarding inheritance taxes to the county treasurer of the county in which the estate was administered. On or before July 1, 2023, and on or before July 1 of each year thereafter, the county treasurer of each county shall compile and submit a report regarding inheritance taxes to the Department of Revenue. The reports shall be submitted on a form prescribed by the Department of Revenue and shall include the following information:

(1) The amount of inheritance tax revenue generated under section 77-2004 and the number of persons receiving property that was subject to tax under section 77-2004;

(2) The amount of inheritance tax revenue generated under section 77-2005 and the number of persons receiving property that was subject to tax under section 77-2005;

(3) The amount of inheritance tax revenue generated under section 77-2006 and the number of persons receiving property that was subject to tax under section 77-2006; and

(4) The number of persons who do not reside in this state and who received any property that was subject to tax under section 77-2004, 77-2005, or 77-2006.

Source: Laws 2022, LB310, § 5.
Effective date July 21, 2022.

77-2018.02 Inheritance tax; independent proceeding for determination in absence of probate of estate; petition; notice; waiver of notice; notice to Department of Health and Human Services.

(1) In the absence of any proceeding brought under Chapter 30, article 24 or 25, in this state, an independent proceeding for the sole purpose of determining the tax may be instituted in the county court of the county where the property or any part thereof which might be subject to tax is situated.

(2) Upon the filing of a petition to initiate such an independent proceeding, the county court shall order the petition set for hearing, not less than two nor more than four weeks after the date of filing the petition, and shall cause notice thereof to be given to all persons interested in the estate of the deceased and the property described in the petition, except as provided in subsections (4) and (5) of this section, in the manner provided for in subsection (3) of this section.

(3) The notice, provided for by subsection (2) of this section, shall be given by one publication in a legal newspaper of the county or, in the absence of such legal newspaper, then in a legal newspaper of some adjoining county of general circulation in the county. In addition to such publication of notice, personal service of notice of the hearing shall be had upon the county attorney of each county in which the property described in the petition is located, at least one week prior to the hearing.

(4) If it appears to the county court, upon the filing of the petition, by any person other than the county attorney, that no assessment of inheritance tax could result, it shall forthwith enter thereon an order directing the county attorney to show cause, within one week from the service thereof, why determination should not be made that no inheritance tax is due on account of the property described in the petition and the potential lien thereof on such property extinguished. Upon service of such order to show cause and failure of such showing by the county attorney, notice of such hearing by publication shall be dispensed with, and the petitioner shall be entitled without delay to a determination of no tax due on account of the property described in the petition, and any potential lien shall be extinguished.

(5) If it appears to the county court that (a) the county attorney of each county in which the property described in the petition is located has executed a waiver of notice upon him or her to show cause, or of the time and place of hearing, and has entered a voluntary appearance in such proceeding in behalf of the county and the State of Nebraska, and (b) either (i) all persons against whom an inheritance tax may be assessed are either a petitioner or have executed a waiver of notice upon them to show cause, or of the time and place of hearing, and have entered a voluntary appearance, or (ii) a party to the proceeding has agreed to pay to the proper counties the full inheritance tax so determined, the court may dispense with the notice provided for in subsections (2) and (3) of this section and proceed without delay to make a determination of inheritance tax, if any, due on account of the property described in the petition.

(6) If a petition is filed to initiate an independent proceeding under this section and the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, notice of the filing of such petition shall be provided to the Department of Health and Human Services with the decedent's social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. A certificate of the providing of the notice to the department shall be filed in the independent proceeding by an attorney for the petitioner or, if there is no attorney, by the petitioner, prior to the entry of an order pursuant to this section. The notice shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering notice on its website. Any notice that fails to conform with such manner is void.

Source: Laws 1953, c. 282, § 8, p. 917; Laws 1959, c. 375, § 1, p. 1314; Laws 1969, c. 682, § 1, p. 2609; Laws 1975, LB 481, § 33; Laws

1976, LB 585, § 15; Laws 1977, LB 456, § 3; Laws 2015, LB72, § 5; Laws 2017, LB268, § 16; Laws 2019, LB315, § 2; Laws 2019, LB593, § 10.

ARTICLE 22

WARRANTS

Section
77-2205. Warrants; payment; time limitation; file claim with State Claims Board.

77-2205 Warrants; payment; time limitation; file claim with State Claims Board.

The State Treasurer shall not pay any warrant which is presented to him or her for payment more than two years after the date of its issuance if issued prior to October 1, 1992, or one year after the date of its issuance if issued on or after October 1, 1992, and any such warrant shall cease to be an obligation of the State of Nebraska and shall be charged off upon the books of the State Treasurer. Except as otherwise provided by law, the amount stated on such warrant shall be credited to the General Fund. Such warrant may, however, thereafter be presented to the State Claims Board which may approve a claim pursuant to the State Miscellaneous Claims Act for the amount of the warrant.

Source: Laws 1907, c. 158, § 1, p. 492; R.S.1913, § 6644; C.S.1922, § 6175; C.S.1929, § 77-2403; R.S.1943, § 77-2205; Laws 1945, c. 195, § 1, p. 598; Laws 1988, LB 864, § 12; Laws 1992, LB 982, § 1; Laws 2021, LB509, § 10.

Cross References

State Miscellaneous Claims Act, see section 81-8,294.

ARTICLE 23

DEPOSIT AND INVESTMENT OF PUBLIC FUNDS

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

Section
77-2386. Act, how cited.
77-2387. Terms, defined.
77-2388. Authorized depositories; security; requirements.
77-2391. Security; delivery requirements; perfection.
77-2392. Substitution or exchange of securities authorized.
77-2393. Withdrawal of securities; when; effect.
77-2394. Deposit guaranty bond; statement required.
77-2395. Custodial official; duties.
77-2396. Custodial official; liability.
77-2397. Depositories of public money or public funds; powers.
77-2398. Deposits in excess of insured or guaranteed amount; requirements.
77-2399. Governmental unit; deposits in excess of insured amount; security interest; rights.
77-23,100. Deposits in excess of insured or guaranteed amount; qualified trustee; duties.
77-23,101. Qualified trustee; requirements.
77-23,102. Default; procedure.
77-23,105. Reports required.
77-23,106. Public money or public funds; prompt payment.
77-23,107. Liability.
77-23,108. Rules and regulations.

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

77-2386 Act, how cited.

Sections 77-2386 to 77-23,108 shall be known and may be cited as the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 1; Laws 2000, LB 932, § 38; Laws 2019, LB622, § 1.

77-2387 Terms, defined.

For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

(1) Affiliate means any entity that controls, is controlled by, or is under common control with another entity;

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(3) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, and a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the act or the security for the deposit of public money or public funds subject to the act;

(6) Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured or guaranteed by the Federal Deposit Insurance Corporation;

(7) Director means the Director of Banking and Finance;

(8) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities;

(9) Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the act;

(10) Governmental unit means the State of Nebraska or any political subdivision thereof;

(11) Political subdivision means any county, city, village, township, district, authority, or other public corporation or entity, whether organized and existing under direct provisions of the Constitution of Nebraska or laws of the State of Nebraska or by virtue of a charter, corporate articles, or other legal instruments executed under authority of the constitution or laws, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act;

(12) Qualifying mutual financial institution shall have the same meaning as in section 77-2365.01;

(13) Repurchase agreement means an agreement to purchase securities by the governing authority by which the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will repurchase the securities on or before a specified date and for a specified amount and the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will deliver the underlying securities to the governing authority by book entry, physical delivery, or third-party custodial agreement. The transfer of underlying securities to the counterparty bank's, capital stock financial institution's, or qualifying mutual financial institution's customer book entry account may be used for book entry delivery if the governing authority so chooses; and

(14) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed securities and collateralized mortgage obligations, issued by or backed by collateral one hundred percent guaranteed by the Federal Home Loan Mortgage Corporation, the Federal Farm Credit System, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Student loans backed or partially guaranteed by the United States Department of Education;

(i) Repurchase agreements the subject securities of which are any of the securities described in subdivisions (a) through (g) of this subdivision;

(j) Securities issued under the authority of the Federal Farm Loan Act;

(k) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture;

(l) Guaranty agreements of the Small Business Administration of the United States Government;

(m) Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection

district, rural water district, or school district in this state which have been issued as required by law;

(n) Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(o) Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications by at least one of the standard rating services, with such classifications to include the underlying credit rating or enhanced credit rating, whichever is higher, with respect to bonds or obligations of a political subdivision of another state;

(p) Warrants of the State of Nebraska;

(q) Warrants of any county, city, village, local hospital district, or school district in this state;

(r) Irrevocable, nontransferable, unconditional standby letters of credit issued by a Federal Home Loan Bank; and

(s) Certificates of deposit fully insured or guaranteed by the Federal Deposit Insurance Corporation that are issued to a bank, capital stock financial institution, or qualifying mutual financial institution furnishing securities pursuant to the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 2; Laws 1997, LB 275, § 2; Laws 2000, LB 932, § 39; Laws 2001, LB 362, § 82; Laws 2001, LB 420, § 35; Laws 2003, LB 131, § 37; Laws 2003, LB 175, § 14; Laws 2004, LB 999, § 50; Laws 2009, LB259, § 27; Laws 2011, LB78, § 1; Laws 2013, LB155, § 1; Laws 2019, LB622, § 2; Laws 2020, LB808, § 93; Laws 2022, LB707, § 59.
Operative date April 19, 2022.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

77-2388 Authorized depositories; security; requirements.

Any bank, capital stock financial institution, or qualifying mutual financial institution subject to a requirement by law to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation may give security by furnishing securities or providing a deposit guaranty bond, or any combination thereof, pursuant to the Public Funds Deposit Security Act in satisfaction of the requirement.

Source: Laws 1996, LB 1274, § 3; Laws 2001, LB 362, § 83; Laws 2009, LB259, § 28; Laws 2019, LB622, § 3.

77-2391 Security; delivery requirements; perfection.

(1) Securities pledged or securities in which a security interest has been granted pursuant to section 77-2389 shall be delivered to and held by a federal reserve bank or by a branch of a federal reserve bank, a federal home loan bank, or another responsible bank, capital stock financial institution, or qualifying mutual financial institution, including a bank, capital stock financial institution, or qualifying mutual financial institution chartered by a foreign state agency as defined in subdivision (14) of section 8-101.03, or trust company,

other than the pledgor or the bank, capital stock financial institution, or qualifying mutual financial institution granting the security interest, as designated by the governing authority, with appropriate joint custody and the pledge agreement or security interest as described in subsection (2) of this section, in a form approved by the governing authority.

(2) The delivery by the bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository to the custodial official of a written receipt or acknowledgment from a federal reserve bank or branch of a federal reserve bank, a federal home loan bank, or another bank, capital stock financial institution, or qualifying mutual financial institution, including a bank, capital stock financial institution, or qualifying mutual financial institution chartered by a foreign state agency as defined in subdivision (14) of section 8-101.03, or trust company, other than the bank, capital stock financial institution, or qualifying mutual financial institution granting the security interest, that includes the title of such custodial official, describes the securities identified on the books or records of the depository, and provides that the securities or the proceeds of the securities will be delivered only upon the surrender of the written receipt or the acknowledgment duly executed by the custodial official designated on the written receipt or the acknowledgment and by the authorized representative of the depository shall, together with the custodial official's actual and continued possession of the written receipt or acknowledgment, constitute a valid and perfected security interest in favor of the custodial official in and to the identified securities.

(3) Articles 8 and 9, Uniform Commercial Code, shall not apply to any security interest arising under this section.

Source: Laws 1996, LB 1274, § 6; Laws 1997, LB 275, § 3; Laws 1999, LB 550, § 44; Laws 2000, LB 932, § 41; Laws 2001, LB 362, § 86; Laws 2021, LB66, § 1.

77-2392 Substitution or exchange of securities authorized.

A bank, capital stock financial institution, or qualifying mutual financial institution which has furnished securities pursuant to the Public Funds Deposit Security Act shall have the right at any time and without prior approval to substitute or exchange other securities of equal value in lieu of securities furnished except that such securities substituted or exchanged shall be those provided for under the act and such substitution or exchange shall not reduce the market value of the securities to an amount that is less than one hundred two percent of the total amount of public money or public funds less the portion of such public money or public funds insured or guaranteed by the Federal Deposit Insurance Corporation. Following any substitution or exchange of securities pursuant to this section by a bank, capital stock financial institution, or qualifying mutual financial institution utilizing the dedicated method as provided in subdivision (2)(a) of section 77-2398, the custodial official shall report such substitution or exchange to the governing authority.

Source: Laws 1996, LB 1274, § 7; Laws 2001, LB 362, § 87; Laws 2019, LB622, § 4.

77-2393 Withdrawal of securities; when; effect.

A bank, capital stock financial institution, or qualifying mutual financial institution which has furnished securities pursuant to the Public Funds Deposit

Security Act may withdraw all or any part of such securities upon repayment to the custodial official, director, or administrator, as applicable, of the amount of the securities thus withdrawn, and thereupon the custodial official, director, or administrator, as applicable, shall be empowered to assign such securities to the owner thereof. All interest coupons attached to securities furnished under the act shall be detached by the holder or qualified trustee thirty days before maturity and returned to such bank, capital stock financial institution, or qualifying mutual financial institution.

Source: Laws 1996, LB 1274, § 8; Laws 2001, LB 362, § 88; Laws 2021, LB66, § 2.

77-2394 Deposit guaranty bond; statement required.

A bank, capital stock financial institution, or qualifying mutual financial institution provides a deposit guaranty bond pursuant to the Public Funds Deposit Security Act if it issues a deposit guaranty bond which runs to the director or custodial official, as applicable, and which is conditioned that the bank, capital stock financial institution, or qualifying mutual financial institution shall, upon written request by the director or custodial official, as applicable, at the end of each and every month, render to the director or custodial official, as applicable, a statement showing the daily balances and the amounts of public money or public funds of the governing authority held by it during the month and how credited. The public money or public funds shall be paid promptly on the order of the custodial official depositing the public money or public funds.

Source: Laws 1996, LB 1274, § 9; Laws 2001, LB 362, § 89; Laws 2019, LB622, § 5; Laws 2021, LB66, § 3.

77-2395 Custodial official; duties.

(1) If a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository provides a deposit guaranty bond or furnishes securities or any combination thereof, pursuant to section 77-2389, the custodial official shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has provided a deposit guaranty bond or furnished securities, or any combination thereof, to the custodial official, and the total value of such deposit guaranty bond and the market value of such securities are in an amount not less than one hundred two percent of the amount on deposit which is in excess of the amount so insured or guaranteed.

(2) If a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository provides a deposit guaranty bond or furnishes securities or any combination thereof, pursuant to subsection (1) of section 77-2398, the governmental unit shall not have on deposit in such depository any public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, unless and until the depository has provided a deposit guaranty bond or furnished securities, or any combination thereof, pursuant to the Public Funds Deposit Security Act, and the total value of such deposit guaranty bond and the aggregate market value of the pool of such securities so provided are in an amount not less than one

hundred two percent of the amount on deposit which is in excess of the amount so insured or guaranteed.

Source: Laws 1996, LB 1274, § 10; Laws 2000, LB 932, § 42; Laws 2001, LB 362, § 90; Laws 2009, LB259, § 30; Laws 2019, LB622, § 6; Laws 2021, LB66, § 4.

77-2396 Custodial official; liability.

No custodial official shall be liable on his or her official bond as such custodial official for public money or public funds on deposit in a bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository if the depository has furnished securities or provided a deposit guaranty bond, or any combination thereof, pursuant to the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 11; Laws 2001, LB 362, § 91; Laws 2019, LB622, § 7.

77-2397 Depositories of public money or public funds; powers.

All depositories of public money or public funds belonging to the State of Nebraska or the political subdivisions in this state shall have full authority to deposit, pledge, or grant a security interest in their assets or to provide a deposit guaranty bond, or any combination thereof, for the security and payment for all such deposits and accretions. The State of Nebraska and any political subdivision in this state and the director, administrator, or custodial official, as applicable, are given the right and authority to accept such deposit, pledge, or grant of a security interest in assets or the provision of a deposit guaranty bond, or any combination thereof.

Source: Laws 1996, LB 1274, § 12; Laws 2019, LB622, § 8; Laws 2021, LB66, § 5.

77-2398 Deposits in excess of insured or guaranteed amount; requirements.

(1) As an alternative to the requirements to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation pursuant to sections 77-2389 and 77-2394, a bank, capital stock financial institution, or qualifying mutual financial institution designated as a public depositary may secure the deposits of one or more governmental units by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities or by a combination thereof to secure the repayment of all public money or public funds deposited in the bank, capital stock financial institution, or qualifying mutual financial institution by such governmental units and not otherwise secured pursuant to law, if at all times the total value of the deposit guaranty bond and the aggregate market value of the pool of securities so deposited, pledged, or in which a security interest is granted is at least equal to one hundred two percent of the amount on deposit which is in excess of the amount so insured or guaranteed. Each such bank, capital stock financial institution, or qualifying mutual financial institution shall carry on its accounting records at all times a general ledger or other appropriate account of the total amount of all public money or public funds to be secured by a deposit guaranty bond or by the pool of securities, or any combination thereof, as determined at the opening of business each day, and the total value of the

deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted to secure such public money or public funds. For purposes of this section, a pool of securities shall include shares of investment companies registered under the federal Investment Company Act of 1940 when the investment companies' assets are limited to obligations that are eligible for investment by the bank, capital stock financial institution, or qualifying mutual financial institution and limited by their prospectuses to owning securities enumerated in section 77-2387.

(2) A bank, capital stock financial institution, or qualifying mutual financial institution may secure the deposit of public money or public funds using the dedicated method, the single bank pooled method, or both methods as set forth in subsection (1) of this section.

(a) Under the dedicated method, a bank, capital stock financial institution, or qualifying mutual financial institution may secure the deposit of public money or public funds by each governmental unit separately by furnishing securities or providing a deposit guaranty bond, or any combination thereof, pursuant to the Public Funds Deposit Security Act.

(b)(i) Under the single bank pooled method, a bank, capital stock financial institution, or qualifying mutual financial institution may secure the deposit of public money or public funds of one or more governmental units by providing a deposit guaranty bond or through a pool of eligible securities established by such bank, capital stock financial institution, or qualifying mutual financial institution with a qualified trustee, or any combination thereof, to be held subject to the order of the director or the administrator for the benefit of the governmental units having public money or public funds with such bank, capital stock financial institution, or qualifying mutual financial institution as set forth in subsection (1) of this section. A bank, capital stock financial institution, or qualifying mutual financial institution may not retain any deposit of public money or public funds which is required to be secured unless, within ten days thereafter or such shorter period as has been agreed upon by the bank, capital stock financial institution, or qualifying mutual financial institution and the director or administrator, it has secured the deposits for the benefit of the governmental units having public money or public funds with such bank, capital stock financial institution, or qualifying mutual financial institution pursuant to this section.

(ii) The director shall designate a bank, savings association, trust company, or other qualified firm, corporation, or association which is authorized to transact business in this state to serve as the administrator with respect to a single bank pooled method. Fees and expenses of such administrator shall be paid by the banks, capital stock financial institutions, or qualifying mutual financial institutions utilizing the single bank pooled method.

(iii) If a bank, capital stock financial institution, or qualifying mutual financial institution elects to secure the deposit of public money or public funds through the use of the single bank pooled method, such bank, capital stock financial institution, or qualifying mutual financial institution shall notify the administrator in writing that it has elected to utilize the single bank pooled method and the proposed effective date thereof.

(iv) The single bank pooled method shall not be utilized by any bank, capital stock financial institution, or qualifying mutual financial institution unless an

administrator has been designated by the director pursuant to subdivision (2)(b)(ii) of this section and is acting as the administrator.

(3) Only a deposit guaranty bond and the securities listed in subdivision (14) of section 77-2387 may be provided and accepted as security for the deposit of public money or public funds and shall be eligible as collateral. The qualified trustee shall not accept any securities which are not listed in subdivision (14) of section 77-2387.

Source: Laws 2000, LB 932, § 43; Laws 2001, LB 362, § 92; Laws 2009, LB259, § 31; Laws 2011, LB78, § 2; Laws 2013, LB155, § 2; Laws 2019, LB622, § 9; Laws 2020, LB909, § 52.

77-2399 Governmental unit; deposits in excess of insured amount; security interest; rights.

(1) Each governmental unit depositing public money or public funds in a bank, capital stock financial institution, or qualifying mutual financial institution shall have an undivided beneficial interest under the deposit guaranty bond provided and an undivided security interest in the pool of securities deposited, pledged, or in which a security interest is granted by such bank, capital stock financial institution, or qualifying mutual financial institution pursuant to subsection (1) of section 77-2398 in the proportion that the total amount of the governmental unit's public money or public funds held deposited in such bank, capital stock financial institution, or qualifying mutual financial institution secured by the deposit guaranty bond or by the pool of securities, or any combination thereof, bears to the total amount of public money or public funds so secured.

(2) The delivery by the bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository to the director or administrator of a written receipt or acknowledgment from a federal reserve bank or branch of a federal reserve bank, a federal home loan bank, or another responsible bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, or qualifying mutual financial institution which is authorized to exercise trust powers, including a bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, or qualifying mutual financial institution which is authorized to exercise trust powers chartered by a foreign state agency as defined in subdivision (14) of section 8-101.03, or trust company other than the bank, capital stock financial institution, or qualifying mutual financial institution granting the security interest, that includes the name of the director or administrator, describes the securities identified on the books or records of the depository, and provides that the securities or the proceeds of the securities will be delivered only upon the surrender of the written receipt or acknowledgment duly executed by the director or administrator designated on the written receipt or acknowledgment and by the authorized representative of the depository shall, together with the director's or administrator's actual and continued possession of the written receipt or acknowledgment, constitute a valid and perfected security interest in favor of the director or administrator in and to the identified securities.

(3) Articles 8 and 9, Uniform Commercial Code, shall not apply to any security interest arising under this section.

Source: Laws 2000, LB 932, § 44; Laws 2001, LB 362, § 93; Laws 2019, LB622, § 10; Laws 2021, LB66, § 6.

77-23,100 Deposits in excess of insured or guaranteed amount; qualified trustee; duties.

(1) Any bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds have been deposited which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation, in whole or in part, by the deposit, pledge, or granting of a security interest in a single pool of securities shall designate a qualified trustee and place with the trustee for holding the securities so deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398, subject to the order of the director or the administrator. The bank, capital stock financial institution, or qualifying mutual financial institution shall give written notice of the designation of the qualified trustee to any governmental unit depositing public money or public funds for which such securities are deposited, pledged, or in which a security interest has been granted, and if an affiliate of the bank, capital stock financial institution, or qualifying mutual financial institution is to serve as the qualified trustee, the notice shall disclose the affiliate relationship and shall be given prior to designation of the qualified trustee. The director or administrator shall accept the written receipt of the qualified trustee describing the pool of securities so deposited, pledged, or in which a security interest has been granted by the bank, capital stock financial institution, or qualifying mutual financial institution, a copy of which shall also be delivered to the bank, capital stock financial institution, or qualifying mutual financial institution.

(2) Any bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation under the Public Funds Deposit Security Act, in whole or in part, by providing a deposit guaranty bond pursuant to the provisions of subsection (1) of section 77-2398, shall designate the director and cause to be issued a deposit guaranty bond which runs to the director acting for the benefit of the governmental units having public money or public funds on deposit with such bank, capital stock financial institution, or qualifying mutual financial institution and which is conditioned that the bank, capital stock financial institution, or qualifying mutual financial institution shall render to the administrator the statement required under subsection (3) of this section.

(3) Each bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities, or any combination thereof, shall, on or before the tenth day of each month, render to the administrator a statement showing as of the last business day of the previous month (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution that is not insured or guaranteed by the Federal Deposit Insurance Corporation (i) by each governmental unit separately and (ii) by all governmental units in the aggregate and (b) the total value of the deposit guaranty bond and the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398. The director shall be authorized, acting for

the benefit of the governmental units having public money or public funds on deposit with such bank, capital stock financial institution, or qualifying mutual financial institution, to take any and all actions necessary to take title to or to effect a first perfected security interest in the securities deposited, pledged, or in which a security interest is granted.

(4) Within twenty days after the deadline for receiving the statement required under subsection (3) of this section from a bank, capital stock financial institution, or qualifying mutual financial institution, the administrator shall provide a report to each governmental unit listed in such statement reflecting (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution by each governmental unit as of the last business day of the previous month that is not insured or guaranteed by the Federal Deposit Insurance Corporation and that is secured pursuant to subsection (1) of section 77-2398 and (b) the total value of the deposit guaranty bond and the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted pursuant to subsection (1) of section 77-2398 as of the last business day of the previous month. The report shall clearly notify the governmental unit if the value of the deposit guaranty bond provided or the securities deposited, pledged, or in which a security interest has been granted, or any combination thereof, do not meet the statutory requirement. The report required by this subsection shall be deemed to have been provided to a governmental unit upon posting of the report by the administrator on its website for access by governmental units participating under the single bank pooled method if the governmental unit has agreed in advance to receive such report by accessing the administrator's website.

Source: Laws 2000, LB 932, § 45; Laws 2001, LB 362, § 94; Laws 2009, LB259, § 32; Laws 2019, LB622, § 11; Laws 2020, LB909, § 53; Laws 2021, LB66, § 7.

77-23,101 Qualified trustee; requirements.

Any Federal Reserve Bank, branch of a Federal Reserve Bank, a federal home loan bank, or another responsible bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, or qualifying mutual financial institution which is authorized to exercise trust powers, including a bank which is authorized to exercise trust powers, capital stock financial institution which is authorized to exercise trust powers, or qualifying mutual financial institution which is authorized to exercise trust powers chartered by a foreign state agency as defined in subdivision (14) of section 8-101.03, or trust company, other than the pledgor or the bank, capital stock financial institution, or qualifying mutual financial institution providing the deposit guaranty bond or granting the security interest, is qualified to act as a qualified trustee for the receipt of a deposit guaranty bond or the holding of securities under section 77-23,100. The bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds are deposited may at any time substitute, exchange, or release securities deposited with a qualified trustee if such substitution, exchange, or release does not reduce the aggregate market value of the pool of securities to an amount that is less than one hundred two percent of the total amount of public money or public funds less the portion of such public money or public funds insured or guaranteed by the Federal Deposit Insurance

Corporation. The bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds are deposited may at any time reduce the amount of the deposit guaranty bond if the reduction does not reduce the total combined value of the deposit guaranty bond and the aggregate market value of the pool of securities to an amount less than one hundred two percent of the total amount of public money or public funds less the portion of such public money or public funds insured or guaranteed by the Federal Deposit Insurance Corporation.

Source: Laws 2000, LB 932, § 46; Laws 2001, LB 362, § 95; Laws 2009, LB259, § 33; Laws 2019, LB622, § 12; Laws 2021, LB66, § 8.

77-23,102 Default; procedure.

(1) When the director determines that a bank, capital stock financial institution, or qualifying mutual financial institution which secures the deposit of public money or public funds using the single bank pooled method has experienced an event of default the director shall proceed in the following manner: (a) The director shall ascertain the aggregate amounts of public money or public funds secured pursuant to subsection (1) of section 77-2398 and deposited in the bank, capital stock financial institution, or qualifying mutual financial institution which has defaulted, as disclosed by the records of such bank, capital stock financial institution, or qualifying mutual financial institution. The director shall determine for each governmental unit for whom public money or public funds are deposited in the defaulting bank, capital stock financial institution, or qualifying mutual financial institution the accounts and amount of federal deposit insurance or guarantee that is available for each account. The director shall then determine for each such governmental unit the amount of public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation and the amount of the deposit guaranty bond or pool of securities pledged, deposited, or in which a security interest has been granted, or any combination thereof, to secure such public money or public funds. Upon completion of this analysis, the director shall provide each such governmental unit with a statement that reports the amount of public money or public funds deposited by the governmental unit in the defaulting bank, capital stock financial institution, or qualifying mutual financial institution, the amount of public money or public funds that may be insured or guaranteed by the Federal Deposit Insurance Corporation, and the amount of public money or public funds secured by a deposit guaranty bond or secured by a pool of securities, or any combination thereof, pursuant to subsection (1) of section 77-2398. Each such governmental unit shall verify this information from his or her records within ten business days after receiving the report and information from the director; and (b) upon receipt of a verified report from such governmental unit and if the defaulting bank, capital stock financial institution, or qualifying mutual financial institution is to be liquidated or if for any other reason the director determines that public money or public funds are not likely to be promptly paid upon demand, the director shall proceed to enforce the deposit guaranty bond and liquidate the pool of securities held to secure the deposit of public money or public funds and shall repay each governmental unit for the public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation deposited in the bank, capital stock financial institution, or qualifying mutual financial institution by the governmental unit. In the event that the amount of the deposit guaranty

bond or the proceeds of the securities held by the director after liquidation is insufficient to cover all public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation for all governmental units for whom the director serves, the director shall pay out to each governmental unit available amounts pro rata in accordance with the respective public money or public funds not insured or guaranteed by the Federal Deposit Insurance Corporation for each such governmental unit.

(2) In the event that a federal deposit insurance agency is appointed and acts as a liquidator or receiver of any bank, capital stock financial institution, or qualifying mutual financial institution under state or federal law, those duties under this section that are specified to be performed by the director in the event of default may be delegated to and performed by such federal deposit insurance agency.

Source: Laws 2000, LB 932, § 47; Laws 2001, LB 362, § 96; Laws 2009, LB259, § 34; Laws 2019, LB622, § 13; Laws 2021, LB66, § 9.

77-23,105 Reports required.

Upon request of a governmental unit, a bank, capital stock financial institution, or qualifying mutual financial institution shall report as of the date of such request the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution that is not insured or guaranteed by the Federal Deposit Insurance Corporation (1) by the governmental unit making the request and (2) by all other governmental units and secured pursuant to subsection (1) of section 77-2398, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted to secure public money or public funds held by the bank, capital stock financial institution, or qualifying mutual financial institution, including those deposited by the governmental unit. Upon request of a governmental unit, a qualified trustee shall report as of the date of such request the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted by the bank, capital stock financial institution, or qualifying mutual financial institution and shall provide an itemized list of the securities in the pool. Such reports shall be made on or before the date the governmental unit specifies.

Source: Laws 2000, LB 932, § 50; Laws 2001, LB 362, § 99; Laws 2009, LB259, § 35; Laws 2021, LB66, § 10.

77-23,106 Public money or public funds; prompt payment.

The public money or public funds in the bank, capital stock financial institution, or qualifying mutual financial institution shall be paid promptly on the order of the custodial official or governmental unit depositing the public money or public funds in such bank, capital stock financial institution, or qualifying mutual financial institution.

Source: Laws 2000, LB 932, § 51; Laws 2001, LB 362, § 100; Laws 2021, LB66, § 11.

77-23,107 Liability.

The director and the administrator under the Public Funds Deposit Security Act shall, except for actions or inactions that constitute gross negligence or

intentional wrongful acts, be immune from liability for any act required of or authorized for the director and the administrator under the act.

Source: Laws 2019, LB622, § 14.

77-23,108 Rules and regulations.

The director may adopt and promulgate rules and regulations, establish policies and procedures, prescribe forms, or issue orders as may be necessary to accomplish the purposes of the Public Funds Deposit Security Act.

Source: Laws 2019, LB622, § 15.

ARTICLE 25

AFFORDABLE HOUSING TAX CREDIT ACT

Section
77-2501. Act, how cited.
77-2502. Terms, defined.
77-2503. Application; form; qualified project; allocation of credit; transfer, sale, or assignment; use of credit.
77-2505. Insurance company; no additional retaliatory tax.
77-2508. Changes made by Laws 2022, LB800; applicability.

77-2501 Act, how cited.

Sections 77-2501 to 77-2508 shall be known and may be cited as the Affordable Housing Tax Credit Act.

Source: Laws 2016, LB884, § 11; Laws 2022, LB800, § 338.
Operative date July 21, 2022.

77-2502 Terms, defined.

For purposes of the Affordable Housing Tax Credit Act:

(1) Allocation year means the year for which the authority awards Nebraska affordable housing tax credits pursuant to the act;

(2) Authority means the Nebraska Investment Finance Authority;

(3) Eligibility statement means a statement authorized and issued by the authority certifying that a given project is a qualified project that qualifies for Nebraska affordable housing tax credits;

(4) Federal low-income housing tax credit means the federal tax credit provided in section 42 of the Internal Revenue Code of 1986, as amended;

(5) Nebraska affordable housing tax credit means the nonrefundable tax credit authorized in section 77-2503;

(6) Qualified project means a qualified low-income building or buildings, as that term is defined in section 42 of the Internal Revenue Code of 1986, as amended;

(7) Qualified taxpayer means a taxpayer owning an interest, direct or indirect, in a qualified project; and

(8) Taxpayer means a person, firm, corporation, or other business entity subject to the income tax imposed by section 77-2715 or 77-2734.02, an insurance company subject to premium and related retaliatory tax liability

imposed by section 44-150, 77-908, or 81-523, or a financial institution subject to the franchise tax imposed by sections 77-3801 to 77-3807.

Source: Laws 2016, LB884, § 12; Laws 2022, LB800, § 339.
Operative date July 21, 2022.

77-2503 Application; form; qualified project; allocation of credit; transfer, sale, or assignment; use of credit.

(1) An owner of an affordable housing project seeking a Nebraska affordable housing tax credit shall file an application with the authority on a form prescribed by the authority. A qualified taxpayer shall be allowed a nonrefundable tax credit if the authority determines that the project for which tax credits are sought is a qualified project.

(2) If the requirements of subsection (1) of this section are met, the authority shall issue an eligibility statement to the owner of such qualified project stating the amount of Nebraska affordable housing tax credits allocated to the qualified project. The amount of such tax credits shall be the amount of federal low-income housing tax credits available to such project, except as otherwise provided in subsection (4) of this section. Tax credits for each building in a qualified project shall be issued for the first six years of the credit period as defined in 26 U.S.C. 42(f)(1), except that any reduction in the credit allowable in the first year of the credit period due to the calculation in 26 U.S.C. 42(f)(2) shall be allowable in the seventh year of the credit period. The authority shall only allocate tax credits to qualified projects that are placed in service after January 1, 2018.

(3) If the owner of the qualified project is (a) a partnership, (b) a limited liability company, or (c) a corporation having an election in effect under subchapter S of the Internal Revenue Code of 1986, as amended, the Nebraska affordable housing tax credit shall be allocated among some or all of the partners, members, or shareholders of the owner of the qualified project in any manner agreed to by such persons, but only if such persons have been admitted as partners or members, or have acquired their shares, on or prior to February 15 of the year in which the tax return, or amended return, claiming the tax credit is filed. A qualified taxpayer may transfer, sell, or assign all or part of his or her ownership interest, including his or her interest in the tax credits authorized in this section. For any tax year in which such an interest is transferred, sold, or assigned pursuant to this subsection, the transferor shall notify the Department of Revenue of the transfer, sale, or assignment and provide the tax identification number of the new owner at least thirty days prior to the new owner claiming the tax credits. The notification shall be in the manner prescribed by the department.

(4) The maximum amount of Nebraska affordable housing tax credits awarded to all qualified projects in any given allocation year shall be no more than one hundred percent of the total amount of federal low-income housing tax credits awarded by the authority in the same allocation year. Notwithstanding any other provision of the Affordable Housing Tax Credit Act, the authority is prohibited from awarding to a qualified project any combined amount of federal low-income housing tax credits and Nebraska affordable housing tax credits that is more than necessary to make the qualified project financially feasible.

(5) Any Nebraska affordable housing tax credits granted under this section may be used to offset any income taxes due under section 77-2715 or 77-2734.02, any premium and related retaliatory taxes due under section 44-150, 77-908, or 81-523, or any franchise taxes due under sections 77-3801 to 77-3807.

(6) The tax credit shall not be used to reduce the tax liability of the qualified taxpayer to less than zero. Any tax credit claimed but not used in a taxable year may be carried forward.

Source: Laws 2016, LB884, § 13; Laws 2017, LB217, § 10; Laws 2022, LB800, § 340.
Operative date July 21, 2022.

77-2505 Insurance company; no additional retaliatory tax.

An insurance company claiming a Nebraska affordable housing tax credit against any premium and related retaliatory taxes due under section 44-150, 77-908, or 81-523 shall not be required to pay any additional retaliatory tax as a result of claiming the tax credit. The tax credit may fully offset any retaliatory tax imposed under Nebraska law. Any tax credit claimed shall be considered a payment of tax for purposes of subsection (1) of section 77-2734.03.

Source: Laws 2016, LB884, § 15; Laws 2022, LB800, § 341.
Operative date July 21, 2022.

77-2508 Changes made by Laws 2022, LB800; applicability.

The changes made in sections 77-2502, 77-2503, and 77-2505 by Laws 2022, LB800, shall apply to taxable years beginning or deemed to begin on or after January 1, 2023.

Source: Laws 2022, LB800, § 342.
Operative date July 21, 2022.

ARTICLE 26

CIGARETTE TAX

Section
77-2601. Terms, defined.
77-2602. Cigarette tax; rate; disposition of proceeds; priority.
77-2603. Tax; stamps; tax meter impressions; requirements; stamping agent; license; application; form; service of process; corporate surety bond; Tax Commissioner; duties; directory license; application; term.

77-2601 Terms, defined.

For purposes of sections 77-2601 to 77-2615:

(1) Person means and includes every individual, firm, association, joint-stock company, partnership, limited liability company, syndicate, corporation, trustee, or other legal entity, including any Indian tribe or instrumentality thereof;

(2) Wholesale dealer means a person who sells cigarettes to licensed retail dealers other than branch stores operated by or connected with such wholesale dealer for purposes of resale and is licensed under section 28-1423;

(3) Retail dealer includes every person other than a wholesale dealer engaged in the business of selling cigarettes in this state irrespective of quantity, amount, or number of sales thereof;

(4) Tax Commissioner means the Tax Commissioner of the State of Nebraska;

(5) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (5)(a) of this section;

(6) Consumer means any person, firm, association, partnership, limited liability company, joint-stock company, syndicate, or corporation not having a license to sell cigarettes;

(7) Sales entity affiliate means an entity that (a) sells cigarettes that it acquires directly from a manufacturer or importer and (b) is affiliated with that manufacturer or importer. Entities are affiliated with each other if one directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other. Unless provided otherwise, manufacturer or importer includes any sales entity affiliate of that manufacturer or importer;

(8) Stamping agent has the same meaning as in section 69-2705; and

(9) Indian country means (a) all land in this state within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of this state, and (c) all Indian allotments in this state, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

Source: Laws 1947, c. 267, § 1, p. 861; Laws 1978, LB 748, § 41; Laws 1993, LB 121, § 499; Laws 2002, LB 989, § 9; Laws 2003, LB 572, § 9; Laws 2011, LB590, § 19; Laws 2019, LB397, § 21.

77-2602 Cigarette tax; rate; disposition of proceeds; priority.

(1) Every stamping agent engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition to all other taxes. It shall be paid prior to or at the time of the sale, gift, or delivery to the retail dealer in the several amounts as follows: On each package of cigarettes containing not more than twenty cigarettes, sixty-four cents per package; and on packages containing more than twenty cigarettes, the same tax as provided on packages containing not more than twenty cigarettes for the first twenty cigarettes in each package and a tax of one-twentieth of the tax on the first twenty cigarettes on each cigarette in excess of twenty cigarettes in each package.

(2) Beginning October 1, 2004, the State Treasurer shall place the equivalent of forty-nine cents of such tax in the General Fund. For purposes of this section, the equivalent of a specified number of cents of the tax shall mean that portion of the proceeds of the tax equal to the specified number divided by the tax rate per package of cigarettes containing not more than twenty cigarettes.

(3) The State Treasurer shall distribute the remaining proceeds of such tax as follows:

(a) Beginning July 1, 1980, the State Treasurer shall place the equivalent of one cent of such tax in the Nebraska Outdoor Recreation Development Cash Fund. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(b) Beginning July 1, 1993, the State Treasurer shall place the equivalent of three cents of such tax in the Health and Human Services Cash Fund to carry out sections 81-637 to 81-640. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(c) Beginning October 1, 2002, and continuing until all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer shall place the equivalent of seven cents of such tax in the Building Renewal Allocation Fund. The distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(d) Beginning July 1, 2016, and every fiscal year thereafter, the State Treasurer shall place the equivalent of three million eight hundred twenty thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the distribution pursuant to this subdivision; and

(e) Beginning July 1, 2016, and every fiscal year thereafter, the State Treasurer shall place the equivalent of one million two hundred fifty thousand dollars of such tax in the Nebraska Health Care Cash Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the distribution pursuant to this subdivision.

(4) If, after distributing the proceeds of such tax pursuant to subsections (2) and (3) of this section, any proceeds of such tax remain, the State Treasurer shall place such remainder in the Nebraska Capital Construction Fund.

(5) The Legislature hereby finds and determines that the projects funded from the Building Renewal Allocation Fund are of critical importance to the State of Nebraska. It is the intent of the Legislature that the allocations and appropriations made by the Legislature to such fund not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such fund are completed or paid, and that until such time any reductions in the cigarette tax rate made by the Legislature shall be simultaneously accompanied by equivalent reductions in the amount dedicated to the General Fund from cigarette tax revenue. Any provision made by the Legislature for distribution of the proceeds of the cigarette tax for projects or programs other than those to (a) the General Fund, (b) the Nebraska

Outdoor Recreation Development Cash Fund, (c) the Health and Human Services Cash Fund, (d) the Building Renewal Allocation Fund, (e) the Nebraska Public Safety Communication System Cash Fund, and (f) the Nebraska Health Care Cash Fund shall not be made a higher priority than or an equal priority to any of the programs or projects specified in subdivisions (a) through (f) of this subsection.

Source: Laws 1947, c. 267, § 2, p. 861; Laws 1957, c. 341, § 1, p. 1179; Laws 1963, c. 457, § 1, p. 1483; Laws 1965, c. 501, § 2, p. 1595; Laws 1965, c. 500, § 1, p. 1590; Laws 1969, c. 645, § 10, p. 2562; Laws 1971, LB 87, § 1; Laws 1972, LB 1433, § 1; Laws 1973, LB 447, § 5; Laws 1974, LB 945, § 9; Laws 1975, Spec. Sess., LB 6, § 67; Laws 1976, LB 1004, § 24; Laws 1976, LB 1006, § 6; Laws 1978, LB 109, § 3; Laws 1981, LB 506, § 5; Laws 1982, LB 753, § 1; Laws 1983, LB 192, § 1; Laws 1983, LB 410, § 1; Laws 1983, LB 469, § 4; Laws 1984, LB 862, § 1; Laws 1985, LB 728, § 1; Laws 1985, LB 653A, § 1; Laws 1985, Second Spec. Sess., LB 3, § 1; Laws 1986, LB 258, § 16; Laws 1986, LB 842, § 1; Laws 1987, LB 730, § 27; Laws 1987, LB 218, § 1; Laws 1989, LB 683, § 1; Laws 1990, LB 1220, § 1; Laws 1991, LB 703, § 65; Laws 1992, Third Spec. Sess., LB 9, § 1; Laws 1992, Third Spec. Sess., LB 11, § 1; Laws 1993, LB 22, § 1; Laws 1993, LB 595, § 2; Laws 1994, LB 961, § 8; Laws 1996, LB 1044, § 795; Laws 1996, LB 1190, § 15; Laws 1998, LB 1107, § 2; Laws 1999, LB 683, § 1; Laws 2000, LB 1349, § 1; Laws 2001, LB 657, § 5; Laws 2002, LB 1085, § 1; Laws 2003, LB 440, § 2; Laws 2003, LB 759, § 3; Laws 2005, LB 426, § 15; Laws 2007, LB296, § 703; Laws 2007, LB322, § 20; Laws 2011, LB590, § 20; Laws 2015, LB661, § 33; Laws 2019, LB193, § 242; Laws 2021, LB509, § 11.

Cross References

Deferred Building Renewal Act, see section 81-190.

77-2603 Tax; stamps; tax meter impressions; requirements; stamping agent; license; application; form; service of process; corporate surety bond; Tax Commissioner; duties; directory license; application; term.

(1) The tax, as levied in section 77-2602, shall be paid and stamps or cigarette tax meter impressions shall be affixed or printed with a cigarette tax meter by the person having possession and ownership of such cigarettes after the same shall have come to rest in this state and intended to be sold or given away in this state. Nothing in sections 77-2601 to 77-2615 shall be construed to require a stamping agent to fix the retail price or to require any retail dealer to sell at any particular price. Subject to such rules and regulations as the Tax Commissioner shall prescribe, tax meter machines may be used when approved by the Tax Commissioner to affix a suitable stamp or impression on each package of cigarettes and cigarettes with a tax meter impression shall be treated as stamped cigarettes for purposes of sections 69-2701 to 69-2711 and 77-2601 to 77-2615. Before any person is issued a license to affix stamps or cigarette tax meter impressions, the person shall make application to become licensed as a stamping agent to the Tax Commissioner on a form provided by the Tax Commissioner to engage in such activity.

(2) Any manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer that engages in the business of selling cigarettes may apply to be licensed as a stamping agent in accordance with this section. A license shall be issued by the Tax Commissioner to an applicant upon the applicant's:

(a) Meeting all requirements of sections 69-2701 to 69-2711 and 77-2601 to 77-2615 and rules and regulations pursuant to such sections;

(b) Certifying on a form prescribed by the Tax Commissioner that it will comply with the requirements of section 69-2708; and

(c) In the case of an applicant located outside of the state, designating an agent for service of process in Nebraska, and providing notice thereof as required by section 69-2707, in connection with enforcement of sections 69-2701 to 69-2711 and 77-2601 to 77-2615, and, if approval is given by the Tax Commissioner, the manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer shall furnish a corporate surety bond, conditioned to faithfully comply with all the requirements of sections 77-2601 to 77-2615, in a sum not less than ten thousand dollars. Such bond shall be subject to forfeiture if the stamping agent fails to pay the shortfall amount under subsection (1) of section 69-2708.01 unless the stamping agent is excused from liability under subsection (3) of section 69-2708.01.

(3) Nothing in sections 77-2601 to 77-2615 shall prevent the Tax Commissioner from affixing the stamps or meter impressions in lieu of the provisions for affixing stamps and meter impressions by stamping agents as determined by such rules and regulations adopted by the Tax Commissioner.

(4) The Tax Commissioner shall list on its website the names of all persons licensed as stamping agents under this section. Manufacturers, importers, and sales entity affiliates shall be entitled to rely upon the list in selling cigarettes as provided in section 69-2706.

(5) A manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer that engages in the business of selling cigarettes and that holds a valid stamping agent license under subsection (1) of this section may apply for a directory license allowing it to purchase or possess in the state cigarettes of a manufacturer or brand family not at the time of purchase listed in the directory for sale into another state if permitted under section 69-2706. A directory license shall be issued by the Tax Commissioner to an applicant upon the applicant's (a) demonstrating that it holds a valid license under subsection (1) of this section and (b) providing a certification by an officer thereof on a form prescribed by the Tax Commissioner that any cigarettes of a manufacturer or brand family not listed in the directory will be purchased or possessed solely for sale or transfer into another state as permitted by section 69-2706. The directory license shall remain in effect for a period of one year.

(6) No directory license may be issued to a person that acted inconsistently with a certification it previously made under subsection (2) of this section.

(7) The Tax Commissioner shall list on its website the names of all persons holding a directory license. Manufacturers, importers, sales entity affiliates, and stamping agents shall be entitled to rely upon the list in selling cigarettes as provided in section 69-2706.

Source: Laws 1947, c. 267, § 3, p. 862; Laws 1949, c. 245, § 1, p. 665; Laws 1951, c. 271, § 1, p. 905; Laws 1963, c. 458, § 1, p. 1484; Laws 2002, LB 989, § 11; Laws 2003, LB 572, § 10; Laws 2011, LB590, § 24; Laws 2019, LB397, § 22.

ARTICLE 27
SALES AND INCOME TAX

(a) ACT, RATES, AND DEFINITIONS

(b) SALES AND USE TAX

(c) INCOME TAX

Section
77-27,119. Income tax; Tax Commissioner; administer and enforce sections; prescribe forms; content; examination of return or report; uniform school district numbering system; audit by Auditor of Public Accounts or office of Legislative Audit; wrongful disclosure; exception; penalty.

(d) GENERAL PROVISIONS

77-27,132. Revenue Distribution Fund; created; use; collections under act; disposition.

(e) GOVERNMENTAL SUBDIVISION AID

77-27,139.04. Aid to municipalities; funds; how distributed.

(g) LOCAL OPTION REVENUE ACT

77-27,144. Municipalities; sales and use tax; Tax Commissioner; collection; distribution; refunds; notice; deductions; qualifying business; duty to provide information.

(h) AIR AND WATER POLLUTION CONTROL TAX REFUND ACT

77-27,150. Refund; application; when; contents; hearing; approval.
77-27,151. Refund; notice to Tax Commissioner; Department of Environment and Energy; duties.
77-27,152. Refund; notice; modify or revoke; when; effect.
77-27,153. Appeal; procedure.
77-27,154. Rules and regulations.

(i) ECONOMIC FORECASTING

77-27,157. Board; membership; terms; officers; quorum; expenses.

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

77-27,187.01. Terms, defined.
77-27,187.02. Application; deadline; contents; fee; written agreement; contents.
77-27,188. Tax credit; allowed; when; amount; repayment.
77-27,195. Report; contents; joint hearing.

(q) COUNTY LICENSE OR OCCUPATION TAX ON ADMISSIONS

77-27,223. County; license or occupation tax; authorized; election.

(t) BIODIESEL FACILITY INVESTMENT CREDIT

77-27,236. Biodiesel facility tax credit; conditions; facility; requirements; information not public record.

(w) ONLINE HOSTING PLATFORM

77-27,239. Online hosting platform; Tax Commissioner; agreement authorized; powers.

(x) CREDIT FOR EMPLOYING INDIVIDUAL CONVICTED OF FELONY

77-27,240. Individual convicted of a felony; employer; tax credit; application; Department of Revenue; powers and duties.

(a) ACT, RATES, AND DEFINITIONS

77-2701 Act, how cited.

Sections 77-2701 to 77-27,135.01, 77-27,222, 77-27,235, 77-27,236, and 77-27,238 to 77-27,240 shall be known and may be cited as the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 1, p. 1533; Laws 1984, LB 1124, § 2; Laws 1985, LB 715, § 1; Laws 1985, LB 273, § 40; Laws 1987, LB 773, § 1; Laws 1987, LB 772, § 1; Laws 1987, LB 775, § 14; Laws 1987, LB 523, § 12; Laws 1989, LB 714, § 1; Laws 1989, LB 762, § 9; Laws 1991, LB 444, § 1; Laws 1991, LB 773, § 6; Laws

1991, LB 829, § 19; Laws 1992, LB 871, § 3; Laws 1992, LB 1063, § 180; Laws 1992, Second Spec. Sess., LB 1, § 153; Laws 1992, Fourth Spec. Sess., LB 1, § 22; Laws 1993, LB 138, § 69; Laws 1993, LB 240, § 1; Laws 1993, LB 345, § 14; Laws 1993, LB 587, § 20; Laws 1993, LB 815, § 22; Laws 1994, LB 901, § 1; Laws 1994, LB 938, § 1; Laws 1995, LB 430, § 2; Laws 1996, LB 106, § 2; Laws 1997, LB 182A, § 1; Laws 1998, LB 924, § 27; Laws 2001, LB 172, § 10; Laws 2001, LB 433, § 2; Laws 2002, LB 57, § 2; Laws 2002, LB 947, § 3; Laws 2003, LB 72, § 1; Laws 2003, LB 168, § 1; Laws 2003, LB 282, § 6; Laws 2003, LB 759, § 4; Laws 2004, LB 1017, § 2; Laws 2005, LB 28, § 1; Laws 2005, LB 312, § 6; Laws 2006, LB 872, § 1; Laws 2006, LB 968, § 3; Laws 2006, LB 1189, § 1; Laws 2007, LB223, § 3; Laws 2007, LB343, § 1; Laws 2007, LB367, § 9; Laws 2008, LB916, § 5; Laws 2009, LB9, § 2; Laws 2012, LB727, § 34; Laws 2012, LB830, § 1; Laws 2012, LB970, § 1; Laws 2012, LB1080, § 2; Laws 2014, LB96, § 1; Laws 2014, LB867, § 8; Laws 2015, LB3, § 1; Laws 2015, LB419, § 1; Laws 2016, LB774, § 2; Laws 2017, LB217, § 14; Laws 2019, LB57, § 2; Laws 2021, LB26, § 1; Laws 2021, LB595, § 2; Laws 2022, LB917, § 1; Laws 2022, LB984, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB917, section 1, with LB984, section 1, to reflect all amendments.

Note: Changes made by LB917 became effective July 21, 2022. Changes made by LB984 became operative October 1, 2022.

77-2701.04 Definitions, where found.

For purposes of sections 77-2701.04 to 77-2713 and 77-27,239, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.55 shall be used.

Source: Laws 1992, LB 871, § 4; Laws 1992, Fourth Spec. Sess., LB 1, § 23; Laws 1993, LB 345, § 15; Laws 1998, LB 924, § 28; R.S.Supp.,2002, § 77-2702.03; Laws 2003, LB 282, § 8; Laws 2003, LB 759, § 6; Laws 2004, LB 1017, § 3; Laws 2005, LB 312, § 7; Laws 2006, LB 968, § 4; Laws 2006, LB 1189, § 2; Laws 2007, LB223, § 4; Laws 2007, LB367, § 10; Laws 2008, LB916, § 6; Laws 2009, LB9, § 3; Laws 2012, LB727, § 35; Laws 2012, LB830, § 2; Laws 2012, LB1080, § 3; Laws 2014, LB96, § 2; Laws 2014, LB867, § 9; Laws 2015, LB419, § 2; Laws 2019, LB57, § 3; Laws 2021, LB26, § 2; Laws 2021, LB595, § 3; Laws 2022, LB984, § 2.
Operative date October 1, 2022.

77-2701.13 Engaged in business in this state, defined.

(1) Engaged in business in this state means conducting operations in this state that exceed the limitations of the commerce clause and due process clause of the United States Constitution and includes, but is not limited to, any of the following:

(a) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse, storage place, or other place of business in this state;

(b) Having any representative, agent, salesperson, canvasser, facilitator, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for any property;

(c) Deriving rentals from a lease of property in this state by any retailer;

(d) Soliciting retail sales of property from residents of this state on a continuous, regular, or systematic basis by means of advertising which is broadcast into this state or installed onto an electronic device located in this state;

(e) Soliciting or facilitating orders from or sales to residents of this state if the activities are continuous, regular, seasonal, or systematic or if the retailer benefits from any activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities;

(f) Being owned or controlled by the same interests which own or control any retailer engaged in business in this state; or

(g) Maintaining or having a franchisee or licensee operating under the retailer's trade name in this state if the franchisee or licensee is required to collect the tax under the Nebraska Revenue Act of 1967.

(2) A retailer who lacks a physical presence in this state and who operates a website or other digital medium or media to execute sales to purchasers of property subject to sales or use taxes in this state, or who uses a multivendor marketplace platform that acts as an intermediary by facilitating sales between a seller and the purchaser of property subject to sales or use taxes in this state, shall be deemed to be engaged in business in this state if:

(a) Such retailer made total retail sales of property in this state that exceeded one hundred thousand dollars in the previous or current calendar year; or

(b) Such retailer made retail sales in this state in two hundred or more separate transactions in the previous or current calendar year.

(3) A multivendor marketplace platform that acts as an intermediary by facilitating sales between a seller and the purchaser of property subject to sales or use taxes in this state shall be deemed to be engaged in business in this state if:

(a) The multivendor marketplace platform made or facilitated total retail sales of property in this state that exceeded one hundred thousand dollars in the previous or current calendar year; or

(b) The multivendor marketplace platform made or facilitated retail sales in this state in two hundred or more separate transactions in the previous or current calendar year.

Source: Laws 1992, LB 871, § 7; Laws 1993, LB 345, § 17; R.S.1943, (1996), § 77-2702.06; Laws 2003, LB 282, § 17; Laws 2019, LB284, § 1.

77-2701.16 Gross receipts, defined.

(1) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

(2) Gross receipts of every person engaged as a public utility specified in this subsection, as a community antenna television service operator, or as a satellite

service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added, nonvoice data service.

(ii) In the furnishing of mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska;

(b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c)(i) In the furnishing of gas, sewer, water, and electricity service, other than electricity service to a customer-generator as defined in section 70-2002, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services.

(ii) In the furnishing of electricity service to a customer-generator as defined in section 70-2002, the net energy use upon billings or statements rendered to customer-generators for such electricity service;

(d) In the furnishing of community antenna television service or satellite service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or satellite service; and

(e) The gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service or satellite service specified in subdivision (2)(d) of this section, except when acting as a subcontractor for a public utility, this subdivision does not apply to the gross income received by a contractor electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 for any such services performed on the customer's side of the utility demarcation point. This subdivision also does not apply to:

(i) The gross income received by a political subdivision of the state, an electric cooperative, or an electric membership association for the lease or use of, or by a contractor for the construction of or services provided on, electric generation, transmission, distribution, or street lighting structures or facilities owned by a political subdivision of the state, an electric cooperative, or an electric membership association; or

(ii) The gross income received for the lease or use of towers or other structures primarily used in conjunction with the furnishing of (A) Internet access services, (B) agricultural global positioning system locating services, or (C) over-the-air radio and television broadcasting licensed by the Federal Communications Commission, including antennas and studio transmitter link systems. For purposes of this subdivision, studio transmitter link system means a system which serves as a conduit to deliver audio from its origin in a studio to a broadcast transmitter.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property means:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing any computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge.

(4) Gross receipts for providing a service means:

(a) The gross income received for building cleaning and maintenance, pest control, and security;

(b) The gross income received for motor vehicle washing, waxing, towing, and painting;

(c) The gross income received for computer software training;

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax. If any or all of the charge for installation is free to the customer and is paid by a third-party service provider to the installer, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid and remitted by the third-party service provider;

(e) The gross income received for services of recreational vehicle parks;

(f) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in section 77-2704.26 or 77-2704.50;

(g) The gross income received for animal specialty services except (i) veterinary services, (ii) specialty services performed on livestock as defined in section 54-183, and (iii) animal grooming performed by a licensed veterinarian or a licensed veterinary technician in conjunction with medical treatment; and

(h) The gross income received for detective services.

(5) Gross receipts includes the sale of admissions. When an admission to an activity or a membership constituting an admission is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

(6) Gross receipts includes the sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate.

(7) Gross receipts includes the sale of any building materials annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2701.10.

(8) Gross receipts includes the sale of and recharge of prepaid calling service and prepaid wireless calling service.

(9) Gross receipts includes the retail sale of digital audio works, digital audiovisual works, digital codes, and digital books delivered electronically if the products are taxable when delivered on tangible storage media. A sale includes the transfer of a permanent right of use, the transfer of a right of use that terminates on some condition, and the transfer of a right of use conditioned upon the receipt of continued payments.

(10) Gross receipts includes any receipts from sales of tangible personal property made over a multivendor marketplace platform that acts as the intermediary by facilitating sales between a seller and the purchaser and that, either directly or indirectly through agreements or arrangements with third parties, collects payment from the purchaser and transmits payment to the seller.

(11) Gross receipts does not include:

(a) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat; or

(b) The price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit.

Source: Laws 1992, LB 871, § 8; Laws 1993, LB 345, § 18; Laws 1994, LB 123, § 21; Laws 1994, LB 901, § 2; Laws 1994, LB 977, § 1; Laws 1994, LB 1087, § 1; Laws 1996, LB 106, § 3; Laws 1999, LB 214, § 1; Laws 2002, LB 947, § 4; Laws 2002, LB 1085, § 3; R.S.Supp.,2002, § 77-2702.07; Laws 2003, LB 282, § 20; Laws 2003, LB 759, § 8; Laws 2004, LB 1017, § 7; Laws 2005, LB 216, § 4; Laws 2005, LB 753, § 1; Laws 2007, LB367, § 13; Laws 2008, LB916, § 7; Laws 2009, LB165, § 5; Laws 2009, LB 587, § 1; Laws 2012, LB727, § 38; Laws 2013, LB90, § 1; Laws 2019, LB218, § 3; Laws 2019, LB284, § 2; Laws 2020, LB923, § 1; Laws 2021, LB595, § 4.

77-2701.32 Retailer, defined.

(1) Retailer means any seller.

(2) To facilitate the proper administration of the Nebraska Revenue Act of 1967, the following persons have the duties and responsibilities of sellers for the purposes of sales and use taxes:

(a) Any person in the business of making sales subject to tax under section 77-2703 at auction of property owned by the person or others;

(b) Any person collecting the proceeds of the auction, other than the owner of the property, together with his or her principal, if any, when the person collecting the proceeds of the auction is not the auctioneer or an agent or employee of the auctioneer. The seller does not include the auctioneer in such case;

(c) Every person who has elected to be considered a retailer pursuant to subdivision (1) of section 77-2701.10;

(d) Every person operating, organizing, or promoting a flea market, craft show, fair, or similar event;

(e) Every person engaged in the business of providing any service defined in subsection (4) of section 77-2701.16; and

(f) Every person operating a multivendor marketplace platform that (i) acts as the intermediary by facilitating sales between a seller and the purchaser or that engages directly or indirectly through one or more affiliated persons in transmitting or otherwise communicating the offer or acceptance between the seller and purchaser and (ii) either directly or indirectly through agreements or arrangements with third parties, collects payment from the purchaser and transmits payment to the seller.

(3) For the proper administration of the Nebraska Revenue Act of 1967, the following persons do not have the duties and responsibilities of a seller for purposes of sales and use taxes:

(a) Any person who leases or rents films when an admission tax is charged under the Nebraska Revenue Act of 1967;

(b) Any person who leases or rents railroad rolling stock interchanged pursuant to the provisions of the federal Interstate Commerce Act;

(c) Any person engaged in the business of furnishing rooms in a facility licensed under the Health Care Facility Licensure Act in which rooms, lodgings, or accommodations are regularly furnished for a consideration or a facility operated by an educational institution established under Chapter 79 or Chapter 85 in which rooms are regularly used to house students for a consideration for periods in excess of thirty days;

(d) Any person making sales at a flea market, craft show, fair, or similar event when such person does not have a sales tax permit and has arranged to pay sales taxes collected to the person operating, organizing, or promoting such event; or

(e) Any payment processor appointed by a retailer whose sole activity with regard to a sale or lease transaction is to process the payment made from the customer to the retailer.

Source: Laws 1992, LB 871, § 15; Laws 1993, LB 345, § 23; Laws 2000, LB 819, § 149; Laws 2002, LB 1085, § 7; R.S.Supp.,2002, § 77-2702.14; Laws 2003, LB 282, § 36; Laws 2003, LB 759, § 10; Laws 2008, LB916, § 8; Laws 2019, LB284, § 3.

Cross References

Health Care Facility Licensure Act, see section 71-401.

77-2701.41 Taxpayer, defined.

Taxpayer means any person subject to a tax imposed by sections 77-2701 to 77-2713.

Source: Laws 1992, LB 871, § 23; R.S.1943, (1996), § 77-2702.22; Laws 2003, LB 282, § 45; Laws 2021, LB26, § 3; Laws 2021, LB595, § 5; Laws 2022, LB984, § 3.
Operative date October 1, 2022.

(b) SALES AND USE TAX

77-2703 Sales and use tax; rate; collection; collection fee; understatement; prohibited acts; violation; penalty; interest.

(1) There is hereby imposed a tax at the rate provided in section 77-2701.02 upon the gross receipts from all sales of tangible personal property sold at retail in this state; the gross receipts of every person engaged as a public utility, as a community antenna television service operator, or as a satellite service operator, any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), (d), or (e) of section 77-2701.16, or every person engaged as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2701.16; the gross receipts from the sale of admissions in this state; the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section; beginning January 1, 2008, the gross receipts from the sale of bundled transactions when one or more of the products included in the bundle are taxable; the gross receipts from the provision of services defined in subsection (4) of section 77-2701.16; and the gross receipts from the sale of products delivered electronically as described in subsection (9) of section 77-2701.16. Except as provided in section 77-2701.03, when there is a sale, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

(a) The tax imposed by this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts. The tax required to be collected by the retailer from the consumer constitutes a debt owed by the retailer to this state.

(b) It is unlawful for any retailer to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer, that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility.

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases.

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to provide a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items. Retailers may compute the tax due on any transaction on an item or an invoice basis. The rounding rule provided in section 77-3,117 applies.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of property is not a sale at retail is upon the person who makes the sale unless he or she takes from the purchaser (i) a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it, (ii) an exemption certificate pursuant to subsection (7) of section 77-2705, or (iii) a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption certificate, or direct payment permit shall be conclusive proof for the seller that the sale was made for resale or was exempt or that the tax will be paid directly to the state.

(g) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price, except as otherwise provided within this section.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the act, for periods of one year or more, the lessor may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of one year or more except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. If the lessor rents or leases other vehicles for periods of less than one year, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner prescribes; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision.

(i) The tax imposed by this section on the sales of motor vehicles, semitrailers, and trailers as defined in sections 60-339, 60-348, and 60-354 shall be the liability of the purchaser and, with the exception of motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198, the tax shall be collected by the county treasurer as provided in the Motor Vehicle Registration Act or by an approved licensed dealer participating in the electronic dealer services

system pursuant to section 60-1507 at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, semitrailer, or trailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the purchaser does not register such motor vehicle, semitrailer, or trailer for operation on the highways of this state within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer or Department of Motor Vehicles shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer, for his or her collection fee, shall deduct and withhold, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax, all of which shall be deposited in the county general fund, plus an additional amount equal to one-half of one percent of all amounts in excess of six thousand dollars remitted each month. Prior to January 1, 2023, fifty percent of such additional amount shall be deposited in the county general fund and fifty percent of such additional amount shall be deposited in the county road fund. On and after January 1, 2023, seventy-five percent of such additional amount shall be deposited in the county general fund and twenty-five percent of such additional amount shall be deposited in the county road fund. In any county with a population of one hundred fifty thousand inhabitants or more, the county treasurer shall remit one dollar of his or her collection fee for each of the first five thousand motor vehicles, semitrailers, or trailers registered with such county treasurer on or after January 1, 2020, to the State Treasurer for credit to the Department of Revenue Enforcement Fund. The Department of Motor Vehicles, for its collection fee, shall deduct, withhold, and deposit in the Motor Carrier Division Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee for the county treasurer or the Department of Motor Vehicles shall be forfeited if the county treasurer or department violates any rule or regulation pertaining to the collection of the use tax.

(j)(i) The tax imposed by this section on the sale of a motorboat as defined in section 37-1204 shall be the liability of the purchaser. The tax shall be collected by the county treasurer at the time the purchaser makes application for the registration of the motorboat. At the time of the sale of a motorboat, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the purchaser does not register such motorboat within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer, for his or her collection fee, shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of motorboats, the tax shall be collected by the lessor on the rental or lease price.

(k)(i) The tax imposed by this section on the sale of an all-terrain vehicle as defined in section 60-103 or a utility-type vehicle as defined in section 60-135.01 shall be the liability of the purchaser. The tax shall be collected by the county treasurer or by an approved licensed dealer participating in the electronic dealer services system pursuant to section 60-1507 at the time the purchaser makes application for the certificate of title for the all-terrain vehicle or utility-type vehicle. At the time of the sale of an all-terrain vehicle or a utility-type vehicle, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the purchaser does not obtain a certificate of title for such

all-terrain vehicle or utility-type vehicle within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer, for his or her collection fee, shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of an all-terrain vehicle or a utility-type vehicle, the tax shall be collected by the lessor on the rental or lease price.

(iii) County treasurers are appointed as sales and use tax collectors for all sales of all-terrain vehicles or utility-type vehicles made outside of this state to purchasers or users of all-terrain vehicles or utility-type vehicles which are required to have a certificate of title in this state. The county treasurer shall collect the applicable use tax from the purchaser of an all-terrain vehicle or a utility-type vehicle purchased outside of this state at the time application for a certificate of title is made. The full use tax on the purchase price shall be collected by the county treasurer if a sales or occupation tax was not paid by the purchaser in the state of purchase. If a sales or occupation tax was lawfully paid in the state of purchase at a rate less than the tax imposed in this state, use tax must be collected on the difference as a condition for obtaining a certificate of title in this state.

(l) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability shall not be extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer

engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting property for storage, use, or other consumption in this state shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. Such collectors of the use tax shall deduct and withhold from the amount of taxes collected three percent of the first five thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, for the sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal, the advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly.

Source: Laws 1967, c. 487, § 3, p. 1543; Laws 1967, c. 490, § 2, p. 1652; Laws 1969, c. 684, § 1, p. 2646; Laws 1969, c. 683, § 2, p. 2621; Laws 1974, LB 820, § 2; Laws 1981, LB 179, § 14; Laws 1983, LB 17, § 2; Laws 1983, LB 169, § 1; Laws 1983, LB 571, § 1; Laws 1985, LB 715, § 3; Laws 1985, LB 273, § 42; Laws 1986, LB 1027, § 204; Laws 1987, LB 224, § 28; Laws 1987, LB 523, § 14; Laws 1991, LB 239, § 1; Laws 1991, LB 47, § 7; Laws 1991, LB 829, § 21; Laws 1992, LB 871, § 25; Laws 1992, LB 1063, § 182; Laws 1992, Second Spec. Sess., LB 1, § 155; Laws

1992, Fourth Spec. Sess., LB 1, § 26; Laws 1993, LB 112, § 45; Laws 1993, LB 345, § 33; Laws 1993, LB 767, § 1; Laws 1994, LB 123, § 24; Laws 1994, LB 994, § 1; Laws 1994, LB 1207, § 15; Laws 1995, LB 17, § 1; Laws 1996, LB 1041, § 6; Laws 1996, LB 1218, § 65; Laws 1997, LB 62, § 1; Laws 1997, LB 182A, § 3; Laws 2002, LB 1085, § 11; Laws 2002, Second Spec. Sess., LB 32, § 1; Laws 2003, LB 282, § 48; Laws 2003, LB 381, § 3; Laws 2003, LB 563, § 43; Laws 2003, LB 759, § 12; Laws 2004, LB 1017, § 10; Laws 2005, LB 274, § 274; Laws 2007, LB223, § 7; Laws 2007, LB367, § 15; Laws 2008, LB916, § 15; Laws 2011, LB211, § 3; Laws 2012, LB801, § 98; Laws 2014, LB814, § 9; Laws 2017, LB263, § 98; Laws 2019, LB237, § 1; Laws 2022, LB984, § 4.
Operative date October 1, 2022.

Cross References

Facilitating Business Rapid Response to State Declared Disasters Act, see section 48-3201.
Motor Vehicle Registration Act, see section 60-301.

77-2703.01 General sourcing rules.

(1) The determination of whether a sale or use of property or the provision of services is in this state, in a municipality that has adopted a tax under the Local Option Revenue Act, or in a county that has adopted a tax under section 13-319 or 77-6403 shall be governed by the sourcing rules in sections 77-2703.01 to 77-2703.04.

(2) When the property or service is received by the purchaser at a business location of the retailer, the sale is sourced to that business location.

(3) When the property or service is not received by the purchaser at a business location of the retailer, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the retailer.

(4) When subsection (2) or (3) of this section does not apply, the sale is sourced to the location indicated by an address or other information for the purchaser that is available from the business records of the retailer that are maintained in the ordinary course of the retailer's business when use of this address does not constitute bad faith.

(5) When subsection (2), (3), or (4) of this section does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subsection (2), (3), (4), or (5) of this section does not apply, including the circumstance in which the retailer is without sufficient information to apply the rules in any such subsection, then the location will be determined by the address from which property was shipped, from which the digital good was first available for transmission by the retailer, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(7) The lease or rental of tangible personal property, other than property identified in subsection (8) or (9) of this section, shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(8) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment under subsection (9) of this section shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(9) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsections (2) through (6) of this section. Transportation equipment means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(b) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are (i) registered through the International Registration Plan and (ii) operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(c) Aircraft operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(d) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (9)(a) through (c) of this section.

(10) For purposes of this section, receive and receipt mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever comes first. The terms receive and receipt do not include possession by a shipping company on behalf of the purchaser. For purposes of sourcing detective services subject to tax under subdivision (4)(h) of section 77-2701.16, making first use of a service shall be deemed to be at the individual's residence, in the case of a customer who is an individual, or at the principal place of business, in the case of a business customer.

(11) The sale, not including lease or rental, of a motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act shall be sourced to the place of registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state or, if no such registration has occurred, the place where such motor vehicle, semitrailer, or trailer is required to be registered, except that beginning January 1, 2021, the sale of any motor vehicle or trailer operated by a public power district and registered under section 60-3,228 shall be sourced to the place where the motor vehicle or trailer has situs as defined in section 60-349.

(12) The sale or lease for one year or more of motorboats shall be sourced to the place of registration of the motorboat. The lease of motorboats for less than one year shall be sourced to the point of delivery.

Source: Laws 2003, LB 282, § 49; Laws 2003, LB 759, § 13; Laws 2004, LB 1017, § 11; Laws 2005, LB 274, § 275; Laws 2007, LB367, § 16; Laws 2008, LB916, § 16; Laws 2014, LB851, § 11; Laws 2018, LB1030, § 2; Laws 2019, LB472, § 10.

Cross References

Local Option Revenue Act, see section 77-27,148.
Motor Vehicle Registration Act, see section 60-301.

77-2703.04 Telecommunications sourcing rule.

(1) Except for the telecommunications service defined in subsection (3) of this section, the sale of telecommunications service sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the telecommunications service defined in subsection (3) of this section, a sale of telecommunications service sold on a basis other than a call-by-call basis and ancillary services are sourced to the customer's place of primary use.

(3)(a) For mobile telecommunications service and ancillary services provided and billed to a customer by a home service provider:

(i) Notwithstanding any other provision of law or any local ordinance or resolution, such mobile telecommunications service is deemed to be provided by the customer's home service provider;

(ii) All taxable charges for such mobile telecommunications service and ancillary services shall be subject to tax by the state or other taxing jurisdiction

in this state whose territorial limits encompass the customer's place of primary use regardless of where the mobile telecommunications service originates, terminates, or passes through; and

(iii) No taxes, charges, or fees may be imposed on a customer with a place of primary use outside this state.

(b) In accordance with the federal Mobile Telecommunications Sourcing Act, as such act existed on July 20, 2002, the Tax Commissioner may, but is not required to:

(i) Provide or contract for a tax assignment database based upon standards identified in 4 U.S.C. 119, as such section existed on July 20, 2002, with the following conditions:

(A) If such database is provided, a home service provider shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such database; or

(B) If such database is not provided, a home service provider may rely on an enhanced zip code for identifying the proper taxing jurisdictions and shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such enhanced zip code if the home service provider identified the taxing jurisdiction through the exercise of due diligence and complied with any procedures that may be adopted by the Tax Commissioner. Any such procedure shall be in accordance with 4 U.S.C. 120, as such section existed on July 20, 2002; and

(ii) Adopt procedures for correcting errors in the assignment of primary use that are consistent with 4 U.S.C. 121, as such section existed on July 20, 2002.

(c) If charges for mobile telecommunications service that are not subject to tax are aggregated with and not separately stated on the bill from charges that are subject to tax, the total charge to the customer shall be subject to tax unless the home service provider can reasonably separate charges not subject to tax using the records of the home service provider that are kept in the regular course of business.

(d) For purposes of this subsection:

(i) Customer means an individual, business, organization, or other person contracting to receive mobile telecommunications service from a home service provider. Customer does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's service area;

(ii) Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide mobile telecommunications service;

(iii) Mobile telecommunications service means a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way wireless communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any personal communication service;

(iv) Place of primary use means the street address representative of where the customer's use of mobile telecommunications service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the customer and shall be within the service area of the home service provider; and

(v) Tax means the sales taxes levied under sections 13-319, 77-2703, 77-27,142, and 77-6403, the surcharges levied under the Enhanced Wireless 911 Services Act, the Nebraska Telecommunications Universal Service Fund Act, and the Telecommunications Relay System Act, and any other tax levied against the customer based on the amount charged to the customer. Tax does not mean an income tax, property tax, franchise tax, or any other tax levied on the home service provider that is not based on the amount charged to the customer.

(4) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system, or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(5) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with section 77-2703.01, except that in the case of a sale of a prepaid wireless calling service, the rule provided in section 77-2703.01 shall include as an option the location associated with the mobile telephone number.

(6) A sale of a private communication service is sourced as follows:

(a) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(b) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located; and

(d) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(7) For purposes of this section:

(a) 800 service means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name 800, 855, 866, 877, and 888 toll-free calling, and any subsequent numbers designated by the Federal Communications Commission;

(b) 900 service means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. 900 service does not include the charge for collection services provided by the seller of the telecommunications

services to the subscriber or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name 900 service, and any subsequent numbers designated by the Federal Communications Commission;

(c) Air-to-ground radiotelephone service means a radio telecommunication service, as that term is defined in 47 C.F.R. 22.99, as such regulation existed on January 1, 2007, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(d) Ancillary services means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billings, directory assistance, vertical service, and voice mail services;

(e) Call-by-call basis means any method of charging for telecommunications service where the price is measured by individual calls;

(f) Coin-operated telephone service means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(g) Communications channel means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(h) Conference bridging service means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(i) Customer means the person or entity that contracts with the seller of telecommunications service. If the end user of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of telecommunications service under this section. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(j) Customer channel termination point means the location where the customer either inputs or receives the communications;

(k) Detailed telecommunications billing service means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(l) Directory assistance means an ancillary service of providing telephone number information and address information;

(m) End user means the person who utilizes the telecommunications service. In the case of an entity, end user means the individual who utilizes the service on behalf of the entity;

(n) Fixed wireless service means a telecommunications service that provides radio communication between fixed points;

(o) International means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;

(p) Interstate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in a different state, territory, or possession of the United States;

(q) Intrastate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in the same state, territory, or possession of the United States;

(r) Mobile wireless service means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider;

(s) Paging service means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers. Such transmission may include messages and sounds;

(t) Pay telephone services means a telecommunications service provided through pay telephones;

(u) Post-paid calling service means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

(v) Prepaid calling service means the right to access exclusively telecommunications service, which is paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(w) Prepaid wireless calling service means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance, that is sold in predetermined units of dollars or which the number declines with use in a known amount;

(x) Private communication service means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(y) Residential telecommunications service means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution;

(z) Service address means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or

terminates, regardless of where the call is billed or paid. If this location is not known, service address means the origination point of the signal of the telecommunications service first identified either by the seller's telecommunications system, or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller. If both locations are not known, the service address means the location of the customer's place of primary use;

(aa) Telecommunications service means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. Telecommunications service does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2007, and audio and video programming services delivered by providers of commercial mobile radio service as defined in 47 C.F.R. 20.3, as such regulation existed on January 1, 2007;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ringtones;

(bb) Value-added, nonvoice data service means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing;

(cc) Vertical service means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(dd) Voice mail service means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not

include any vertical services that the customer may be required to have in order to utilize the voice mail service.

Source: Laws 2003, LB 282, § 52; Laws 2007, LB223, § 8; Laws 2009, LB165, § 7; Laws 2019, LB472, § 11.

Cross References

Enhanced Wireless 911 Services Act, see section 86-442.
Nebraska Telecommunications Universal Service Fund Act, see section 86-316.
Telecommunications Relay System Act, see section 86-301.

77-2704.12 Nonprofit religious, service, educational, or medical organization; exemption; purchasing agents.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by (a) any nonprofit organization created exclusively for religious purposes, (b) any nonprofit organization providing services exclusively to the blind, (c) any nonprofit private educational institution established under sections 79-1601 to 79-1607, (d) any accredited, nonprofit, privately controlled college or university with its primary campus physically located in Nebraska, (e) any nonprofit (i) hospital, (ii) health clinic when one or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, (iii) skilled nursing facility, (iv) intermediate care facility, (v) assisted-living facility, (vi) intermediate care facility for persons with developmental disabilities, (vii) nursing facility, (viii) home health agency, (ix) hospice or hospice service, (x) respite care service, (xi) mental health substance use treatment center licensed under the Health Care Facility Licensure Act, or (xii) center for independent living as defined in 29 U.S.C. 796a, (f) any nonprofit licensed residential child-caring agency, (g) any nonprofit licensed child-placing agency, or (h) any nonprofit organization certified by the Department of Health and Human Services to provide community-based services for persons with developmental disabilities.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or

repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming building materials in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which building materials are annexed to real estate and which subsequently belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 36; Laws 1993, LB 345, § 42; Laws 1994, LB 977, § 3; Laws 1996, LB 900, § 1063; Laws 2000, LB 819, § 151; Laws 2002, LB 989, § 18; Laws 2004, LB 841, § 1; Laws 2004, LB 1017, § 13; Laws 2005, LB 216, § 6; Laws 2006, LB 1189, § 5; Laws 2008, LB575, § 1; Laws 2011, LB637, § 24; Laws 2012, LB40, § 1; Laws 2012, LB1097, § 1; Laws 2013, LB23, § 43; Laws 2013, LB265, § 46; Laws 2016, LB774, § 3; Laws 2018, LB1034, § 71; Laws 2021, LB528, § 19.

Cross References

Health Care Facility Licensure Act, see section 71-401.

77-2704.15 Purchases by state, schools, or governmental units; exemption; purchasing agents.

(1)(a) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, rural or suburban fire protection district, city airport authority, county airport authority, joint airport authority, drainage district organized under sections 31-401 to 31-450, sanitary drainage district organized under sections 31-501 to 31-553, land bank created under the Nebraska Municipal Land Bank Act, natural resources district, county agricultural society, elected county fair board, housing agency as defined in section 71-1575 except for purchases for any commercial operation that does not exclusively benefit the residents of an affordable housing project, cemetery created under section 12-101, or joint entity or agency formed by any combination of two or more counties, townships, cities, villages, or other exempt governmental units pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools or learning communities established under Chapter 79.

(b) For purposes of this subsection, purchases by the state or by a governmental unit listed in subdivision (a) of this subsection include purchases by a nonprofit corporation under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of title to the property to the state or governmental unit upon payment of all amounts due thereunder. If a nonprofit corporation will be making purchases under a lease-purchase agreement, financing lease, or other instrument as part of a project with a total estimated cost that exceeds the threshold amount, then such purchases shall qualify for an exemption under this section only if the question of proceeding with such project has been submitted at a primary, general, or special election held within the governmental unit that will be a party to the lease-purchase agreement, financing lease, or other instrument and has been approved by the voters of such governmental unit. For purposes of this subdivision, (i) project means the acquisition of real property or the construction of a public building and (ii) threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental unit that will be a party to the lease-purchase agreement, financing lease, or other instrument as of the end of the governmental unit's prior fiscal year.

(2) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 39; Laws 1993, LB 345, § 44; Laws 1994, LB 977, § 5; Laws 1994, LB 1207, § 16; Laws 1999, LB 87, § 86; Laws 1999, LB 232, § 1; Laws 2000, LB 557, § 1; Laws 2002, LB 123, § 1; Laws 2004, LB 1017, § 14; Laws 2006, LB 1189, § 6; Laws 2009, LB392, § 8; Laws 2011, LB252, § 2; Laws 2012, LB902, § 2; Laws 2013, LB97, § 26; Laws 2015, LB52, § 1; Laws 2016, LB774, § 5; Laws 2022, LB800, § 343.
Operative date April 19, 2022.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Municipal Land Bank Act, see section 18-3401.

77-2704.20 Purchases by licensees of the State Racing and Gaming Commission; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases made by licensees of the State Racing and Gaming Commission.

Source: Laws 1992, LB 871, § 50; Initiative Law 2020, No. 430, § 11; Laws 2021, LB561, § 48.

77-2704.31 Sales or use tax paid in another state; credit given.

If any person who causes property or service to be brought into this state has already paid a tax in another state with respect to the sale or use of such property or service in an amount less than the tax imposed by sections 13-319, 13-2813, 77-2703, 77-27,142, and 77-6403, the provisions of subsection (2) of section 77-2703 shall apply, but at a rate measured by the difference only between the rate imposed by such sections and the rate by which the previous tax on the sale or use was computed. If such tax imposed and paid in such other state is equal to or more than the tax imposed by such sections, then no use tax shall be due in this state on such property if such other state, territory, or possession grants a reciprocal exclusion or exemption to similar transactions in this state.

Source: Laws 1992, LB 871, § 54; Laws 1993, LB 345, § 50; Laws 1999, LB 34, § 2; Laws 2001, LB 142, § 55; Laws 2002, LB 1085, § 16; Laws 2019, LB472, § 12.

77-2704.36 Agricultural machinery and equipment; net wrap; exemption.

(1) Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of:

(a) Depreciable agricultural machinery and equipment purchased, leased, or rented on or after January 1, 1993, for use in commercial agriculture; or

(b) Net wrap purchased for use in commercial agriculture.

(2) For purposes of this section:

(a)(i) Agricultural machinery and equipment means tangible personal property that is used directly in (A) cultivating or harvesting a crop, (B) raising or caring for animal life, (C) protecting the health and welfare of animal life, including fans, curtains, and climate control equipment within livestock buildings, or (D) collecting or processing an agricultural product on a farm or ranch, regardless of the degree of attachment to any real property; and

(ii) Agricultural machinery and equipment includes, but is not limited to, header trailers, head haulers, header transports, and seed tender trailers and excludes any current tractor model as defined in section 2-2701.01 not permitted for sale in Nebraska pursuant to sections 2-2701 to 2-2711; and

(b) Net wrap means plastic wrap used in the baling of hay.

Source: Laws 1992, Fourth Spec. Sess., LB 1, § 24; Laws 2004, LB 1017, § 17; Laws 2012, LB907, § 6; Laws 2021, LB595, § 6; Laws 2022, LB984, § 5.
Operative date October 1, 2022.

77-2704.68 Residential water service; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of residential water service.

Source: Laws 2021, LB26, § 4.

77-2704.69 Catalysts, chemicals, and materials used in the process of manufacturing ethyl alcohol; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of all catalysts, chemicals, and materials used in the process of manufacturing ethyl alcohol and the production of coproducts.

Source: Laws 2021, LB595, § 7.

77-2704.70 Feminine hygiene products; exemption.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, storage, use, or other consumption in this state of feminine hygiene products.

(2) For purposes of this section:

(a) Feminine hygiene products means tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle but does not include grooming and hygiene products; and

(b) Grooming and hygiene products means soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items meet the definition of over-the-counter drug in section 77-2704.09.

Source: Laws 2022, LB984, § 6.
Operative date October 1, 2022.

77-2705 Sales and use tax; retailer; registration; permit; form; revocation; restoration; appeal; exempt sale certificate; violations; penalty; wrongful disclosure; online registration system.

(1) Except as provided in subsection (10) of this section, every retailer shall register with the Tax Commissioner and give:

(a) The name and address of all agents operating in this state;

(b) The location of all distribution or sales houses or offices or other places of business in this state;

(c) The name and address of any officer, director, partner, limited liability company member, or employee, other than an employee whose duties are purely ministerial in nature, or any person with a substantial interest in the applicant, who is or who will be responsible for the collection or remittance of the sales tax;

(d) Such other information as the Tax Commissioner may require; and

(e) If the retailer is an individual, his or her social security number.

(2) Every person furnishing public utility service as defined in subsection (2) of section 77-2701.16 shall register with the Tax Commissioner and give:

(a) The address of each office open to the public in which such public utility service business is transacted with consumers; and

(b) Such other information as the Tax Commissioner may require.

(3)(a) It shall be unlawful for any person to engage in or transact business as a seller within this state after June 1, 1967, unless a permit or permits shall have been issued to him or her as prescribed in this section.

(b) Every person desiring to engage in or to conduct business as a seller within this state shall file with the Tax Commissioner an application for a permit for each place of business. There shall be no charge to the retailer for the application for or issuance of a permit except as otherwise provided in this section.

(c) If a retailer becomes engaged in business in this state during a calendar year by exceeding one of the thresholds in subsection (2) or (3) of section 77-2701.13 for the first time, the retailer must obtain a permit and begin collecting the sales tax on or before the first day of the second calendar month after the threshold was exceeded. Such retailer shall also be subject to the Local Option Revenue Act and sections 13-319 and 13-2813 and shall collect and remit the sales tax due under such act and sections.

(4) Every application for a permit shall:

(a) Be made upon a form prescribed by the Tax Commissioner;

(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his or her place or places of business;

(c) Set forth such other information as the Tax Commissioner may require; and

(d) Be signed by the owner and include his or her social security number if he or she is a natural person; in the case of an association or partnership, by a member or partner; in the case of a limited liability company, by a member or some person authorized by the limited liability company to sign such kinds of applications; and in the case of a corporation, by an executive officer or some person authorized by the corporation to sign such kinds of applications.

(5) After compliance with subsections (1) through (4) of this section by the applicant, the Tax Commissioner shall grant and issue to each applicant a separate permit for each place of business within the state. A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued and shall be valid and effective until revoked by the Tax Commissioner.

(6)(a) Whenever the holder of a permit issued under subsection (5) of this section or any person required to be identified in subdivision (1)(c) of this section (i) fails to comply with any provision of the Nebraska Revenue Act of 1967 relating to the retail sales tax or with any rule or regulation of the Tax Commissioner relating to such tax prescribed and adopted under such act, (ii) fails to provide for inspection or audit any book, record, document, or item required by law, rule, or regulation, or (iii) makes a misrepresentation of or fails to disclose a material fact to the Department of Revenue, the Tax Commissioner upon hearing, after giving the person twenty days' notice in writing specifying the time and place of hearing and requiring him or her to show cause why his or her permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person. The Tax Commis-

sioner shall give to the person written notice of the suspension or revocation of any of his or her permits. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(b) The Tax Commissioner shall have the power to restore permits which have been revoked but shall not issue a new permit after the revocation of a permit unless he or she is satisfied that the former holder of the permit will comply with the provisions of such act relating to the retail sales tax and the regulations of the Tax Commissioner. A seller whose permit has been previously suspended or revoked under this subsection shall pay the Tax Commissioner a fee of twenty-five dollars for the renewal or issuance of a permit in the event of a first revocation and fifty dollars for renewal after each successive revocation.

(c) The action of the Tax Commissioner may be appealed by the taxpayer in the same manner as a final deficiency determination.

(7) For the purpose of more efficiently securing the payment, collection, and accounting for the sales and use taxes and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to formulate and promulgate appropriate rules and regulations providing a form and method for the registration of exempt purchases and the documentation of exempt sales.

(8) If any person, firm, corporation, association, or agent thereof presents an exempt sale certificate to the seller for property which is purchased by a taxpayer or for a use other than those enumerated in the Nebraska Revenue Act of 1967 as exempted from the computation of sales and use taxes, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from the purchaser or the agent thereof a penalty of one hundred dollars or ten times the tax, whichever amount is larger, for each instance of such presentation and misuse of an exempt sale certificate. Such amount shall be in addition to any tax, interest, or penalty otherwise imposed.

(9) Any report, name, or information which is supplied to the Tax Commissioner regarding a violation specified in this section, including the identity of the informer, shall be subject to the pertinent provisions regarding wrongful disclosure in section 77-2711.

(10) Pursuant to the streamlined sales and use tax agreement, the state shall participate in an online registration system that will allow retailers to register in all the member states. The state hereby agrees to honor and abide by the retailer registration decisions made by the governing board pursuant to the agreement.

Source: Laws 1967, c. 487, § 5, p. 1553; Laws 1967, c. 490, § 4, p. 1663; Laws 1982, LB 928, § 65; Laws 1984, LB 962, § 9; Laws 1992, LB 871, § 60; Laws 1993, LB 121, § 502; Laws 1993, LB 345, § 54; Laws 1997, LB 752, § 212; Laws 2002, Second Spec. Sess., LB 32, § 2; Laws 2003, LB 282, § 70; Laws 2003, LB 759, § 20; Laws 2008, LB916, § 24; Laws 2019, LB284, § 4.

Cross References

Local Option Revenue Act, see section 77-27,148.

77-2708 Sales and use tax; returns; date due; failure to file; penalty; deduction; amount; claim for refund; allowance; disallowance; proceedings; Tax Commissioner; duties regarding refund.

(1)(a) The sales and use taxes imposed by the Nebraska Revenue Act of 1967 shall be due and payable to the Tax Commissioner monthly on or before the twentieth day of the month next succeeding each monthly period unless otherwise provided pursuant to the Nebraska Revenue Act of 1967.

(b)(i) On or before the twentieth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers depending on their yearly tax liability. Except as required by the streamlined sales and use tax agreement, annual returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than three thousand dollars, and monthly returns shall be required if their yearly tax liability is three thousand dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer or for any retailer remitting tax to the state pursuant to the streamlined sales and use tax agreement. Such rules and regulations may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten percent of the amount paid, a penalty of fifty percent of the unpaid amount shall be imposed.

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax, except that a combined sales tax return may be filed for all licensed locations which are subject to common ownership. For purposes of this subdivision, common ownership means the same person or persons own eighty percent or more of each licensed location. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(iii) The Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath.

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, an accrual basis, or any generally recognized accounting basis which

correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales, the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) Except as provided in the streamlined sales and use tax agreement, the taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty, in addition to interest, of ten percent of the amount of tax not paid by the required filing date or twenty-five dollars, whichever is greater, unless the penalty is being collected under subdivision (1)(i), (1)(j)(i), or (1)(k)(i) of section 77-2703 by a county treasurer or the Department of Motor Vehicles, in which case the penalty shall be five dollars.

(d) The taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, three percent of the first five thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. Taxpayers filing a combined return as allowed by subdivision (1)(b)(ii) of this subsection shall compute such collection fees on the basis of the receipts and liability of each licensed location.

(e) A retailer that makes sales into Nebraska using a multivendor marketplace platform is relieved of its obligation to collect and remit sales taxes to Nebraska with regard to any sales taxes collected and remitted by the multivendor marketplace platform. Such a retailer must include all sales into Nebraska in its gross receipts in its return, but may claim credit for any sales taxes collected and remitted by the multivendor marketplace platform with respect to such retailer's sales. Such retailer is liable for the sales tax due on sales into Nebraska as provided in section 77-2704.35.

(f) A multivendor marketplace platform is relieved of its obligation to collect and remit the correct amount of state and local sales taxes to Nebraska to the

extent that the multivendor marketplace platform can establish that the error was due to insufficient or incorrect information given to the multivendor marketplace platform by the seller and relied on by the multivendor marketplace platform. This subdivision shall not apply if the multivendor marketplace platform and the seller are related persons under either section 267(b) or (c) or section 707(b) of the Internal Revenue Code of 1986 or if the seller is also the multivendor marketplace platform operator.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, has been erroneously or illegally collected or computed, or has been paid and the purchaser qualifies for a refund under section 77-2708.01, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing on forms prescribed by the Tax Commissioner and shall state the specific amount and grounds upon which the claim is founded. No refund shall be made in any amount less than two dollars.

(d) The Tax Commissioner shall allow or disallow a claim within one hundred eighty days after it has been filed. A request for a hearing shall constitute a waiver of the one-hundred-eighty-day period. The claimant and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If a hearing has not been requested and the Tax Commissioner has neither allowed nor disallowed a claim within either the one hundred eighty days or the period agreed to by the claimant and the Tax Commissioner, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the Nebraska Revenue Act of 1967, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section 77-27,127.

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.02, as such rate may from time to time be adjusted,

from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability or a refund under section 77-2708.01, no interest shall be allowed when such excess is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within one year from the date of refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later.

(j)(i) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on any deduction taken that is attributed to bad debts not including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as such section existed on January 1, 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid; and expenses incurred in attempting to collect any debt and repossessed property.

(ii) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(iii) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(iv) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the otherwise applicable statute of limitations for refund claims. The statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(v) If filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the retailer, any bad debt allowance provided by this section. The certified service provider shall credit or refund the full amount of any bad debt allowance or refund received to the retailer.

(vi) For purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(vii) In situations in which the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states in the streamlined sales and use tax agreement, the state shall permit the allocation.

(3) Beginning July 1, 2020, if a refund claim under this section involves a refund of a tax imposed under the Local Option Revenue Act or section 13-319, 13-2813, or 77-6403 and the amount of such tax to be refunded is at least five thousand dollars, the Tax Commissioner shall notify the affected city, village, county, or municipal county of such claim within twenty days after receiving the claim. If the Tax Commissioner allows the claim and the refund of such tax is at least five thousand dollars, the Tax Commissioner shall notify the affected city, village, county, or municipal county of such refund and shall give the city, village, county, or municipal county the option of having such refund deducted from its tax proceeds in one lump sum or in twelve equal monthly installments. The city, village, county, or municipal county shall make its selection and shall certify the selection to the Tax Commissioner within twenty days after receiving notice of the refund. The Tax Commissioner shall then deduct such refund from the applicable tax proceeds in accordance with the selection when he or she deducts refunds pursuant to section 13-324, 13-2814, or 77-6403 or subsection (1) of section 77-27,144, whichever is applicable. This subsection shall not apply to any refund that is subject to subdivision (2)(a) or (2)(b)(ii) or subsection (3) or (4) of section 77-27,144.

Source: Laws 1967, c. 487, § 8, p. 1558; Laws 1967, c. 490, § 5, p. 1665; Laws 1969, c. 683, § 5, p. 2635; Laws 1976, LB 996, § 1; Laws 1981, LB 179, § 15; Laws 1981, LB 167, § 51; Laws 1982, Spec. Sess., LB 2, § 1; Laws 1983, LB 101, § 1; Laws 1983, LB 571, § 2; Laws 1984, LB 758, § 1; Laws 1985, LB 715, § 7; Laws 1985, LB 273, § 46; Laws 1987, LB 775, § 15; Laws 1987, LB 523, § 16; Laws 1988, LB 1234, § 1; Laws 1991, LB 829, § 23; Laws 1992, LB 1063, § 183; Laws 1992, Second Spec. Sess., LB 1, § 156; Laws 1992, Fourth Spec. Sess., LB 1, § 28; Laws 1993, LB 128, § 1; Laws 1993, LB 345, § 56; Laws 1995, LB 9, § 1; Laws 1995, LB 118, § 1; Laws 1996, LB 1041, § 7; Laws 2002, Second Spec. Sess., LB 32, § 3; Laws 2003, LB 282, § 71; Laws 2005, LB 216, § 8; Laws 2008, LB916, § 25; Laws 2011, LB210, § 9; Laws 2012, LB801, § 99; Laws 2014, LB814, § 10; Laws 2018, LB745, § 1; Laws 2019, LB284, § 5; Laws 2019, LB472, § 13; Laws 2022, LB984, § 7; Laws 2022, LB1150, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB984, section 7, with LB1150, section 2, to reflect all amendments.

Note: Changes made by LB984 became operative October 1, 2022. Changes made by LB1150 became operative January 1, 2023.

Cross References

Local Option Revenue Act, see section 77-27,148.

77-2711 Sales and use tax; Tax Commissioner; enforcement; records; retain; reports; wrongful disclosures; exceptions; information provided to municipality; penalty; waiver; streamlined sales and use tax agreement; confidentiality rights.

(1)(a) The Tax Commissioner shall enforce sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

(3)(a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

(b) Every such seller, retailer, or person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. In the examination of any person selling property or of any person liable for the use tax, an inquiry shall be made as to the accuracy of the reporting of city and county sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813, and 77-6403 and the accuracy of the allocation made between the various counties, cities, villages, and municipal counties of the tax due. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

(6) In administration of the use tax, the Tax Commissioner may require the filing of reports by any person or class of persons having in his, her, or their possession or custody information relating to sales of property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed when the Tax Commissioner requires and shall set forth the names and addresses of purchasers of the property, the sales price of the property, the date of sale, and such other information as the Tax Commissioner may require.

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or

guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party, (g) the disclosure of information pursuant to section 77-27,195, 77-5731, 77-6837, 77-6839, or 77-6928, or (h) the disclosure of information to the Department of Labor necessary for the administration of the Employment Security Law, the Contractor Registration Act, or the Employee Classification Act.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2701.04 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may, upon request, provide the county board of any county which has exercised the authority granted by section 81-3716 with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed or for which lodging sales taxes have been remitted for the county's County Visitors Promotion Fund under the Nebraska Visitors Development Act.

The information provided by the Tax Commissioner shall indicate only the names and addresses of the hotels located within the requesting county for which lodging sales tax returns have been filed for a specified period and the fact that lodging sales taxes remitted by or on behalf of the hotel have constituted a portion of the total sum remitted by the state to the county for a specified period under the provisions of the Nebraska Visitors Development Act. No additional information shall be revealed.

(11)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the office of Legislative Audit, make tax returns and tax return information open to inspection by or disclosure to the Auditor of Public Accounts or employees of the office of Legislative Audit for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No employee of the Auditor of Public Accounts or the office of Legislative Audit shall disclose to any person, other than another Auditor of Public Accounts or office employee whose official duties require such disclosure, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor. For purposes of this subsection, employee includes a former Auditor of Public Accounts or office of Legislative Audit employee.

(12) For purposes of this subsection and subsections (11) and (14) of this section:

(a) Disclosure means the making known to any person in any manner a tax return or return information;

(b) Return information means:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Tax return or return means any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return.

(13) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon request, provide any municipality which has adopted the local option sales tax under the Local Option Revenue Act with a list of the names and addresses of the retailers which have collected the local option sales tax for the municipality. The request may be made annually and shall be submitted to the Tax Commissioner on or before June 30 of each year. The information provided by the Tax Commissioner shall indicate only the names and addresses of the retailers. The Tax Commissioner may provide additional

information to a municipality so long as the information does not include any data detailing the specific revenue, expenses, or operations of any particular business.

(14)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request, provide an individual certified under subdivision (b) of this subsection representing a municipality which has adopted the local option sales and use tax under the Local Option Revenue Act with confidential sales and use tax returns and sales and use tax return information regarding taxpayers that possess a sales tax permit and the amounts remitted by such permitholders at locations within the boundaries of the requesting municipality or with confidential business use tax returns and business use tax return information regarding taxpayers that file a Nebraska and Local Business Use Tax Return and the amounts remitted by such taxpayers at locations within the boundaries of the requesting municipality. Any written request pursuant to this subsection shall provide the Department of Revenue with no less than ten business days to prepare the sales and use tax returns and sales and use tax return information requested. The individual certified under subdivision (b) of this subsection shall review such returns and return information only upon the premises of the department, except that such limitation shall not apply if the certifying municipality has an agreement in effect under the Nebraska Advantage Transformational Tourism and Redevelopment Act. In such case, the individual certified under subdivision (b) of this subsection may request that copies of such returns and return information be sent to him or her by electronic transmission, secured in a manner as determined by the Tax Commissioner.

(b) Each municipality that seeks to request information under subdivision (a) of this subsection shall certify to the Department of Revenue one individual who is authorized by such municipality to make such request and review the documents described in subdivision (a) of this subsection. The individual may be a municipal employee or an individual who contracts with the requesting municipality to provide financial, accounting, or other administrative services.

(c) No individual certified by a municipality pursuant to subdivision (b) of this subsection shall disclose to any person any information obtained pursuant to a review under this subsection. An individual certified by a municipality pursuant to subdivision (b) of this subsection shall remain subject to this subsection after he or she (i) is no longer certified or (ii) is no longer in the employment of or under contract with the certifying municipality.

(d) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor.

(e) The Department of Revenue shall not be held liable by any person for an impermissible disclosure by a municipality or any agent or employee thereof of any information obtained pursuant to a review under this subsection.

(15) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act or interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted.

(16)(a) The purpose of this subsection is to set forth the state's policy for the protection of the confidentiality rights of all participants in the system operated

pursuant to the streamlined sales and use tax agreement and of the privacy interests of consumers who deal with model 1 sellers.

(b) For purposes of this subsection:

(i) Anonymous data means information that does not identify a person;

(ii) Confidential taxpayer information means all information that is protected under a member state's laws, regulations, and privileges; and

(iii) Personally identifiable information means information that identifies a person.

(c) The state agrees that a fundamental precept for model 1 sellers is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) The governing board of the member states in the streamlined sales and use tax agreement may certify a certified service provider only if that certified service provider certifies that:

(i) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(ii) Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;

(iii) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the website of the certified service provider;

(iv) Its collection, use, and retention of personally identifiable information is limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

(v) It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

(e) The state shall provide public notification to consumers, including exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.

(f) When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision (16)(d)(iv) of this section, such information shall no longer be retained by the member states.

(g) When personally identifiable information regarding an individual is retained by or on behalf of the state, it shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

(h) If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

(i) This privacy policy is subject to enforcement by the Attorney General.

(j) All other laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this subsection does not enlarge or limit the state's authority to:

(i) Conduct audits or other reviews as provided under the agreement and state law;

(ii) Provide records pursuant to the federal Freedom of Information Act, disclosure laws with governmental agencies, or other regulations;

(iii) Prevent, consistent with state law, disclosure of confidential taxpayer information;

(iv) Prevent, consistent with federal law, disclosure or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; and

(v) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

Source: Laws 1967, c. 487, § 11, p. 1566; Laws 1969, c. 683, § 7, p. 2641; Laws 1977, LB 39, § 239; Laws 1981, LB 170, § 6; Laws 1982, LB 705, § 2; Laws 1984, LB 962, § 12; Laws 1985, LB 344, § 4; Laws 1987, LB 523, § 17; Laws 1991, LB 773, § 10; Laws 1992, LB 871, § 61; Laws 1992, Fourth Spec. Sess., LB 1, § 31; Laws 1993, LB 345, § 60; Laws 1994, LB 1175, § 1; Laws 1995, LB 134, § 3; Laws 1996, LB 1177, § 18; Laws 2001, LB 142, § 56; Laws 2003, LB 282, § 73; Laws 2005, LB 216, § 9; Laws 2005, LB 312, § 11; Laws 2006, LB 588, § 8; Laws 2007, LB94, § 1; Laws 2007, LB223, § 9; Laws 2008, LB914, § 8; Laws 2009, LB165, § 10; Laws 2010, LB563, § 14; Laws 2010, LB879, § 9; Laws 2012, LB209, § 1; Laws 2012, LB1053, § 25; Laws 2013, LB39, § 12; Laws 2014, LB867, § 15; Laws 2015, LB539, § 6; Laws 2016, LB1022, § 4; Laws 2019, LB472, § 14; Laws 2020, LB236, § 1; Laws 2020, LB1107, § 129; Laws 2021, LB26, § 5; Laws 2021, LB544, § 31; Laws 2021, LB595, § 8; Laws 2022, LB984, § 8.
Operative date October 1, 2022.

Cross References

Contractor Registration Act, see section 48-2101.
Employee Classification Act, see section 48-2901.
Employment Security Law, see section 48-601.
Local Option Revenue Act, see section 77-27,148.
Nebraska Advantage Transformational Tourism and Redevelopment Act, see section 77-1001.
Nebraska Visitors Development Act, see section 81-3701.

77-2712.05 Streamlined sales and use tax agreement; requirements.

By agreeing to the terms of the streamlined sales and use tax agreement, this state agrees to abide by the following requirements:

(1) Uniform state rate. The state shall comply with restrictions to achieve over time more uniform state rates through the following:

(a) Limiting the number of state rates;

(b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and

(c) Limiting the application of thresholds on the application of state tax;

(2) Uniform standards. The state hereby establishes uniform standards for the following:

(a) Sourcing of transactions to taxing jurisdictions as provided in sections 77-2703.01 to 77-2703.04;

(b) Administration of exempt sales as set out by the agreement and using procedures as determined by the governing board;

(c) Allowances a seller can take for bad debts as provided in section 77-2708; and

(d) Sales and use tax returns and remittances. To comply with the agreement, the Tax Commissioner shall:

(i) Require only one remittance for each return except as provided in this subdivision. If any additional remittance is required, it may only be required from retailers that collect more than thirty thousand dollars in sales and use taxes in the state during the preceding calendar year as provided in this subdivision. The amount of any additional remittance may be determined through a calculation method rather than actual collections. Any additional remittance shall not require the filing of an additional return;

(ii) Require, at his or her discretion, all remittances from sellers under models 1, 2, and 3 to be remitted electronically;

(iii) Allow for electronic payments by both automated clearinghouse credit and debit;

(iv) Provide an alternative method for making same day payments if an electronic funds transfer fails;

(v) Provide that if a due date falls on a legal banking holiday, the taxes are due to that state on the next succeeding business day; and

(vi) Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board of the member states to the streamlined sales and use tax agreement;

(3) Uniform definitions. (a) The state shall utilize the uniform definitions of sales and use tax terms as provided in the agreement. The definitions enable Nebraska to preserve its ability to make taxability and exemption choices not inconsistent with the uniform definitions.

(b) The state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, the state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

(c) The state may enact an entity-based or a use-based exemption without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, states may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a

term that includes the product, states may enact an entity-based or a use-based exemption for the product without restriction.

(d) For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded;

(4) Central registration. The state shall participate in an electronic central registration system that allows a seller to register to collect and remit sales and use taxes for all member states. Under the system:

(a) A retailer registering under the agreement is registered in this state;

(b) The state agrees not to require the payment of any registration fees or other charges for a retailer to register in the state if the retailer has no legal requirement to register;

(c) A written signature from the retailer is not required;

(d) An agent may register a retailer under uniform procedures adopted by the member states pursuant to the agreement;

(e) A retailer may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the retailer of its liability for remitting to the proper states any taxes collected;

(f) When registering, the retailer that is registered under the agreement may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:

(i) Model 1, wherein a seller selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;

(ii) Model 2, wherein a seller selects a certified automated system to use which calculates the amount of tax due on a transaction; and

(iii) Model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated system; and

(g) Sellers who register within twelve months after this state's first approval of a certified service provider are relieved from liability, including the local option tax, for tax not collected or paid if the seller was not registered between October 1, 2004, and September 30, 2005. Such relief from liability shall be in accordance with the terms of the agreement;

(5) No nexus attribution. The state agrees that registration with the central registration system and the collection of sales and use taxes in the state will not be used as a factor in determining whether the seller has nexus with the state for any tax at any time;

(6) Local sales and use taxes. The agreement requires the reduction of the burdens of complying with local sales and use taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03, 77-27,142, 77-27,143, 77-27,144, and 77-6403 that require the following:

(a) No variation between the state and local tax bases;

(b) Statewide administration of all sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Limitations on the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Uniform notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;

(7) Complete a taxability matrix approved by the governing board. (a) Notice of changes in the taxability of the products or services listed will be provided as required by the governing board.

(b) The entries in the matrix shall be provided and maintained in a database that is in a downloadable format approved by the governing board.

(c) Sellers, model 2 sellers, and certified service providers are relieved from liability, including the local option tax, for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix or for relying on product-based classifications that have been reviewed and approved by the state. The state shall notify the certified service provider or model 2 seller if an item or transaction is incorrectly classified as to its taxability.

(d) Purchasers are relieved from liability for penalty for having failed to pay the correct amount of tax resulting from the purchaser's reliance on erroneous data provided by the member state in the taxability matrix or rates and boundaries databases or for relying on product-based classifications that have been reviewed and approved by the state;

(8) Monetary allowances. The state agrees to allow any monetary allowances that are to be provided by the states to sellers or certified service providers in exchange for collecting sales and use taxes as provided in Article VI of the agreement;

(9) State compliance. The agreement requires the state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

(10) Consumer privacy. The state hereby adopts a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information as provided in section 77-2711; and

(11) Advisory councils. The state agrees to the recognition of an advisory council of private-sector representatives and an advisory council of member and nonmember state representatives to consult with in the administration of the agreement.

Source: Laws 2001, LB 172, § 6; Laws 2003, LB 282, § 77; Laws 2004, LB 1017, § 20; Laws 2005, LB 16, § 1; Laws 2006, LB 887, § 4; Laws 2007, LB223, § 11; Laws 2009, LB165, § 11; Laws 2019, LB472, § 15.

77-2713 Sales and use tax; failure to collect; false return; violations; penalty; statute of limitations.

(1) Any person required under the provisions of sections 77-2701.04 to 77-2713 to collect, account for, or pay over any tax imposed by the Nebraska Revenue Act of 1967 who willfully fails to collect or truthfully account for or pay over such tax and any person who willfully attempts in any manner to

evade any tax imposed by such provisions of such act or the payment thereof shall, in addition to other penalties provided by law, be guilty of a Class IV felony.

(2) Any person who willfully aids or assists in, procures, counsels, or advises the preparation or presentation of a false or fraudulent return, affidavit, claim, or document under or in connection with any matter arising under sections 77-2701.04 to 77-2713 shall, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document, be guilty of a Class IV felony.

(3) A person who engages in business as a retailer in this state without a permit or permits or after a permit has been suspended and each officer of any corporation which so engages in business shall be guilty of a Class IV misdemeanor. Each day of such operation shall constitute a separate offense.

(4) Any person who gives a resale certificate to the seller for property which he or she knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease, or rental by him or her in the regular course of business shall be guilty of a Class IV misdemeanor.

(5) Any violation of the provisions of sections 77-2701.04 to 77-2713, except as otherwise provided, shall be a Class IV misdemeanor.

(6) Any prosecution under sections 77-2701.04 to 77-2713 shall be instituted within three years after the commission of the offense. If such offense is the failure to do an act required by any of such sections to be done before a certain date, a prosecution for such offense may be commenced not later than three years after such date. The failure to do any act required by sections 77-2701.04 to 77-2713 shall be deemed an act committed in part at the principal office of the Tax Commissioner. Any prosecution under the provisions of the Nebraska Revenue Act of 1967 may be conducted in any county where the person or corporation to whose liability the proceeding relates resides or has a place of business or in any county in which such criminal act is committed. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of any offenses under the provisions of the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 13, p. 1574; Laws 1977, LB 39, § 240; Laws 1989, LB 459, § 1; Laws 1992, LB 871, § 62; Laws 2003, LB 282, § 78; Laws 2021, LB26, § 6; Laws 2021, LB595, § 9; Laws 2022, LB984, § 9.
Operative date October 1, 2022.

(c) INCOME TAX

77-2715.03 Individual income tax brackets and rates; Tax Commissioner; duties; tax tables; other taxes; tax rate.

(1) For taxable years beginning or deemed to begin on or after January 1, 2013, and before January 1, 2014, the following brackets and rates are hereby established for the Nebraska individual income tax:

Individual Income Tax Brackets and Rates

Bracket Number	Single Individuals	Married, Filing Jointly	Head of Household	Married, Filing Separate	Estates and Trusts	Tax Rate

1	$0-2,399	$0-4,799	$0-4,499	$0-2,399	$0-499	2.46%
2	$2,400-17,499	$4,800-34,999	$4,500-27,999	$2,400-17,499	$500-4,699	3.51%
3	$17,500-26,999	$35,000-53,999	$28,000-39,999	$17,500-26,999	$4,700-15,149	5.01%
4	$27,000 and Over	$54,000 and Over	$40,000 and Over	$27,000 and Over	$15,150 and Over	6.84%

(2) For taxable years beginning or deemed to begin on or after January 1, 2014, the following brackets and rates are hereby established for the Nebraska individual income tax:

Individual Income Tax Brackets and Rates

Bracket Number	Single Individuals	Married, Filing Jointly	Head of Household	Married, Filing Separate	Estates and Trusts	Tax Rate
1	$0-2,999	$0-5,999	$0-5,599	$0-2,999	$0-499	2.46%
2	$3,000-17,999	$6,000-35,999	$5,600-28,799	$3,000-17,999	$500-4,699	3.51%
3	$18,000-28,999	$36,000-57,999	$28,800-42,999	$18,000-28,999	$4,700-15,149	5.01%
4	$29,000 and Over	$58,000 and Over	$43,000 and Over	$29,000 and Over	$15,150 and Over	Top Rate

For purposes of this subsection, the top rate shall be:

(a) 6.84% for taxable years beginning or deemed to begin on or after January 1, 2014, and before January 1, 2023;

(b) 6.64% for taxable years beginning or deemed to begin on or after January 1, 2023, and before January 1, 2024;

(c) 6.44% for taxable years beginning or deemed to begin on or after January 1, 2024, and before January 1, 2025;

(d) 6.24% for taxable years beginning or deemed to begin on or after January 1, 2025, and before January 1, 2026;

(e) 6.00% for taxable years beginning or deemed to begin on or after January 1, 2026, and before January 1, 2027; and

(f) 5.84% for taxable years beginning or deemed to begin on or after January 1, 2027.

(3)(a) For taxable years beginning or deemed to begin on or after January 1, 2015, the minimum and maximum dollar amounts for each income tax bracket provided in subsection (2) of this section shall be adjusted for inflation by the percentage determined under subdivision (3)(b) of this section. The rate applicable to any such income tax bracket shall not be changed as part of any adjustment under this subsection. The minimum and maximum dollar amounts for each income tax bracket as adjusted shall be rounded to the nearest ten-dollar amount. If the adjusted amount for any income tax bracket ends in a five, it shall be rounded up to the nearest ten-dollar amount.

(b)(i) For taxable years beginning or deemed to begin on or after January 1, 2015, and before January 1, 2018, the Tax Commissioner shall adjust the income tax brackets by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code of 1986, as it existed prior to December 22, 2017, except that in section 1(f)(3)(B) of the code the year 2013 shall be substituted for the year 1992. For 2015, the Tax Commissioner shall

then determine the percent change from the twelve months ending on August 31, 2013, to the twelve months ending on August 31, 2014, and in each subsequent year, from the twelve months ending on August 31, 2013, to the twelve months ending on August 31 of the year preceding the taxable year. The Tax Commissioner shall prescribe new tax rate schedules that apply in lieu of the schedules set forth in subsection (2) of this section.

(ii) For taxable years beginning or deemed to begin on or after January 1, 2018, the Tax Commissioner shall adjust the income tax brackets based on the percentage change in the Consumer Price Index for All Urban Consumers published by the federal Bureau of Labor Statistics from the twelve months ending on August 31, 2016, to the twelve months ending on August 31 of the year preceding the taxable year. The Tax Commissioner shall prescribe new tax rate schedules that apply in lieu of the schedules set forth in subsection (2) of this section.

(4) Whenever the tax brackets or tax rates are changed by the Legislature, the Tax Commissioner shall update the tax rate schedules to reflect the new tax brackets or tax rates and shall publish such updated schedules.

(5) The Tax Commissioner shall prepare, from the rate schedules, tax tables which can be used by a majority of the taxpayers to determine their Nebraska tax liability. The design of the tax tables shall be determined by the Tax Commissioner. The size of the tax table brackets may change as the level of income changes. The difference in tax between two tax table brackets shall not exceed fifteen dollars. The Tax Commissioner may build the personal exemption credit and standard deduction amounts into the tax tables.

(6) For taxable years beginning or deemed to begin on or after January 1, 2013, the tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be 29.6 percent.

(7) The Tax Commissioner may require by rule and regulation that all taxpayers shall use the tax tables if their income is less than the maximum income included in the tax tables.

Source: Laws 2012, LB970, § 5; Laws 2014, LB987, § 1; Laws 2018, LB1090, § 1; Laws 2022, LB873, § 1.
Effective date July 21, 2022.

77-2715.07 Income tax credits.

(1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such nonrefundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net

operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 21 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, or the Volunteer Emergency Responders Incentive Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended, except that for taxable years beginning or deemed to begin on or after January 1, 2015, such refundable credit shall be allowed only if the individual would have received the federal credit allowed under section 32 of the code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income;

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236;

(d) A credit as provided in the New Markets Job Growth Investment Act;

(e) A credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act;

(f) A credit to employers as provided in sections 77-27,238 and 77-27,240; and

(g) A credit as provided in the Affordable Housing Tax Credit Act.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (6) of section 77-5211.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

(6) There shall be allowed to all individuals nonrefundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in section 77-3604 and refundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in section 77-3605.

(7)(a) For taxable years beginning or deemed to begin on or after January 1, 2020, and before January 1, 2026, under the Internal Revenue Code of 1986, as amended, a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 in the amount of five thousand dollars shall be allowed to any individual who purchases a residence during the taxable year if such residence:

(i) Is located within an area that has been declared an extremely blighted area under section 18-2101.02;

(ii) Is the individual's primary residence; and

(iii) Was not purchased from a family member of the individual or a family member of the individual's spouse.

(b) The credit provided in this subsection shall be claimed for the taxable year in which the residence is purchased. If the individual cannot fully utilize the credit for such year, the credit may be carried forward to subsequent taxable years until fully utilized.

(c) No more than one credit may be claimed under this subsection with respect to a single residence.

(d) The credit provided in this subsection shall be subject to recapture by the Department of Revenue if the individual claiming the credit sells or otherwise transfers the residence or quits using the residence as his or her primary residence within five years after the end of the taxable year in which the credit was claimed.

(e) For purposes of this subsection, family member means an individual's spouse, child, parent, brother, sister, grandchild, or grandparent, whether by blood, marriage, or adoption.

(8) There shall be allowed to all individuals refundable credits against the income tax imposed by the Nebraska Revenue Act of 1967 as provided in the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act.

(9)(a) For taxable years beginning or deemed to begin on or after January 1, 2022, under the Internal Revenue Code of 1986, as amended, a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 shall be allowed to the parent of a stillborn child if:

(i) A fetal death certificate is filed pursuant to subsection (1) of section 71-606 for such child;

(ii) Such child had advanced to at least the twentieth week of gestation; and

(iii) Such child would have been a dependent of the individual claiming the credit.

(b) The amount of the credit shall be two thousand dollars.

(c) The credit shall be allowed for the taxable year in which the stillbirth occurred.

Source: Laws 1987, LB 773, § 6; Laws 1989, LB 739, § 2; Laws 1993, LB 5, § 3; Laws 1993, LB 121, § 503; Laws 1993, LB 240, § 4; Laws 1993, LB 815, § 23; Laws 1994, LB 977, § 12; Laws 1996, LB 898, § 5; Laws 1998, LB 1028, § 2; Laws 1999, LB 630, § 1; Laws 2001, LB 433, § 4; Laws 2005, LB 312, § 12; Laws 2006, LB 968, § 8; Laws 2006, LB 990, § 1; Laws 2007, LB343, § 3; Laws 2007, LB367, § 20; Laws 2007, LB456, § 1; Laws 2009, LB165, § 12; Laws 2011, LB389, § 12; Laws 2012, LB1128, § 22; Laws 2014, LB191, § 17; Laws 2015, LB591, § 12; Laws 2016, LB774, § 7; Laws 2016, LB884, § 19; Laws 2016, LB886, § 6; Laws 2016, LB889, § 10; Laws 2019, LB86, § 10; Laws 2019, LB560, § 1; Laws 2020, LB1107, § 130; Laws 2021, LB432, § 11; Laws 2022, LB917, § 3; Laws 2022, LB1261, § 10.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB917, section 3, with LB1261, section 10, to reflect all amendments.

Note: Changes made by LB917 became effective July 21, 2022. Changes made by LB1261 became operative July 21, 2022.

Cross References

Affordable Housing Tax Credit Act, see section 77-2501.
Angel Investment Tax Credit Act, see section 77-6301.
Beginning Farmer Tax Credit Act, see section 77-5201.
Community Development Assistance Act, see section 13-201.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.
Nebraska Higher Blend Tax Credit Act, see section 77-7001.
Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.
Nebraska Property Tax Incentive Act, see section 77-6701.
New Markets Job Growth Investment Act, see section 77-1101.
Renewable Chemical Production Tax Credit Act, see section 77-6601.
Volunteer Emergency Responders Incentive Act, see section 77-3101.

77-2716 Income tax; adjustments.

(1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a)(i) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States; and

(ii) There shall be subtracted interest received by the owner of obligations of the State of Nebraska or its political subdivisions or authorities which are Build America Bonds to the extent includable in gross income for federal income tax purposes;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e)(i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code or from a limited liability company organized pursuant to the Nebraska Uniform Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1817 and any account established under the achieving a better life experience program as provided in sections 77-1401 to 77-1409.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust or contributions to an account established under the achieving a better life experience program made for the benefit of a beneficiary as provided in sections 77-1401 to 77-1409, to the extent not deducted for federal income tax purposes, but not to exceed five thousand dollars per married filing separate return or ten thousand dollars for any other return. With respect to a qualified rollover within the meaning of section 529 of the Internal Revenue Code from another state's plan, any interest, earnings, and state contributions received from the other state's educational savings plan which is qualified under section 529 of the code shall qualify for the reduction provided in this subdivision. For contributions by a custodian of a custodial account including rollovers from another custodial account, the reduction shall only apply to funds added to the custodial account after January 1, 2014.

(c) For taxable years beginning or deemed to begin on or after January 1, 2021, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced, to the extent included in the adjusted gross income of an individual, by the amount of any contribution made by the individual's employer into an account under the Nebraska educational savings plan trust owned by the individual, not to exceed five thousand dollars per married filing separate return or ten thousand dollars for any other return.

(d) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by:

(i) The amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted under subdivision (8)(b) of this section; and

(ii) The amount of any withdrawals by the owner of an account established under the achieving a better life experience program as provided in sections 77-1401 to 77-1409 for nonqualified expenses to the extent previously deducted under subdivision (8)(b) of this section.

(9)(a) For income tax returns filed after September 10, 2001, for taxable years beginning or deemed to begin before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before December 31, 2005.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, subchapter S corporation, or joint venture, the increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

(10) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

(11)(a) For taxable years beginning or deemed to begin before January 1, 2018, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced by contributions, up to two thousand dollars per married filing jointly return or one thousand dollars for any other return, and any investment earnings made as a participant in the Nebraska long-term care savings plan under the Long-Term Care Savings Plan Act, to the extent not deducted for federal income tax purposes.

(b) For taxable years beginning or deemed to begin before January 1, 2018, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be increased by the withdrawals made as a participant in the Nebraska long-term care savings plan under the act by a person who is not a qualified individual or for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant, including withdrawals made by reason of cancellation of the

participation agreement, to the extent previously deducted as a contribution or as investment earnings.

(12) There shall be added to federal adjusted gross income for individuals, estates, and trusts any amount taken as a credit for franchise tax paid by a financial institution under sections 77-3801 to 77-3807 as allowed by subsection (5) of section 77-2715.07.

(13)(a) For taxable years beginning or deemed to begin on or after January 1, 2015, and before January 1, 2025, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced by the amount received as benefits under the federal Social Security Act which are included in the federal adjusted gross income if:

(i) For taxpayers filing a married filing joint return, federal adjusted gross income is fifty-eight thousand dollars or less; or

(ii) For taxpayers filing any other return, federal adjusted gross income is forty-three thousand dollars or less.

(b) For taxable years beginning or deemed to begin on or after January 1, 2020, and before January 1, 2025, under the Internal Revenue Code of 1986, as amended, the Tax Commissioner shall adjust the dollar amounts provided in subdivisions (13)(a)(i) and (ii) of this section by the same percentage used to adjust individual income tax brackets under subsection (3) of section 77-2715.03.

(c) For taxable years beginning or deemed to begin on or after January 1, 2021, and before January 1, 2025, under the Internal Revenue Code of 1986, as amended, a taxpayer may claim the reduction to federal adjusted gross income allowed under this subsection or the reduction to federal adjusted gross income allowed under subsection (14) of this section, whichever provides the greater reduction.

(14)(a) For taxable years beginning or deemed to begin on or after January 1, 2021, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced by a percentage of the social security benefits that are received and included in federal adjusted gross income. The pertinent percentage shall be:

(i) Five percent for taxable years beginning or deemed to begin on or after January 1, 2021, and before January 1, 2022, under the Internal Revenue Code of 1986, as amended;

(ii) Forty percent for taxable years beginning or deemed to begin on or after January 1, 2022, and before January 1, 2023, under the Internal Revenue Code of 1986, as amended;

(iii) Sixty percent for taxable years beginning or deemed to begin on or after January 1, 2023, and before January 1, 2024, under the Internal Revenue Code of 1986, as amended;

(iv) Eighty percent for taxable years beginning or deemed to begin on or after January 1, 2024, and before January 1, 2025, under the Internal Revenue Code of 1986, as amended; and

(v) One hundred percent for taxable years beginning or deemed to begin on or after January 1, 2025, under the Internal Revenue Code of 1986, as amended.

(b) For purposes of this subsection, social security benefits means benefits received under the federal Social Security Act.

(c) For taxable years beginning or deemed to begin on or after January 1, 2021, and before January 1, 2025, under the Internal Revenue Code of 1986, as amended, a taxpayer may claim the reduction to federal adjusted gross income allowed under this subsection or the reduction to federal adjusted gross income allowed under subsection (13) of this section, whichever provides the greater reduction.

(15)(a) For taxable years beginning or deemed to begin on or after January 1, 2015, and before January 1, 2022, under the Internal Revenue Code of 1986, as amended, an individual may make a one-time election within two calendar years after the date of his or her retirement from the military to exclude income received as a military retirement benefit by the individual to the extent included in federal adjusted gross income and as provided in this subdivision. The individual may elect to exclude forty percent of his or her military retirement benefit income for seven consecutive taxable years beginning with the year in which the election is made or may elect to exclude fifteen percent of his or her military retirement benefit income for all taxable years beginning with the year in which he or she turns sixty-seven years of age.

(b) For taxable years beginning or deemed to begin on or after January 1, 2022, under the Internal Revenue Code of 1986, as amended, an individual may exclude one hundred percent of the military retirement benefit income received by such individual to the extent included in federal adjusted gross income.

(c) For purposes of this subsection, military retirement benefit means retirement benefits that are periodic payments attributable to service in the uniformed services of the United States for personal services performed by an individual prior to his or her retirement. The term includes retirement benefits described in this subdivision that are reported to the individual on either:

(i) An Internal Revenue Service Form 1099-R received from the United States Department of Defense; or

(ii) An Internal Revenue Service Form 1099-R received from the United States Office of Personnel Management.

(16) For taxable years beginning or deemed to begin on or after January 1, 2021, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced by the amount received as a Segal AmeriCorps Education Award, to the extent such amount is included in federal adjusted gross income.

(17) For taxable years beginning or deemed to begin on or after January 1, 2022, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced by the amount received by or on behalf of a firefighter for cancer benefits under the Firefighter Cancer Benefits Act to the extent included in federal adjusted gross income.

(18) There shall be subtracted from the federal adjusted gross income of individuals any amount received by the individual as student loan repayment assistance under the Teach in Nebraska Today Act, to the extent such amount is included in federal adjusted gross income.

(19) For taxable years beginning or deemed to begin on or after January 1, 2023, under the Internal Revenue Code of 1986, as amended, a retired individual who was employed full time as a certified law enforcement officer for at

least twenty years and who is at least sixty years of age as of the end of the taxable year may reduce his or her federal adjusted gross income by the amount of health insurance premiums paid by such individual during the taxable year, to the extent such premiums were not already deducted in determining the individual's federal adjusted gross income.

Source: Laws 1967, c. 487, § 16, p. 1579; Laws 1983, LB 619, § 1; Laws 1984, LB 962, § 15; Laws 1984, LB 1124, § 3; Laws 1985, LB 273, § 50; Laws 1986, LB 774, § 9; Laws 1987, LB 523, § 20; Laws 1987, LB 773, § 9; Laws 1989, LB 458, § 2; Laws 1989, LB 459, § 3; Laws 1991, LB 773, § 13; Laws 1993, LB 121, § 504; Laws 1994, LB 977, § 13; Laws 1997, LB 401, § 2; Laws 1998, LB 1028, § 3; Laws 2000, LB 1003, § 15; Laws 2002, LB 1085, § 18; Laws 2003, LB 596, § 1; Laws 2005, LB 216, § 10; Laws 2006, LB 965, § 6; Laws 2006, LB 968, § 9; Laws 2007, LB338, § 1; Laws 2007, LB368, § 135; Laws 2007, LB456, § 2; Laws 2010, LB197, § 1; Laws 2010, LB888, § 104; Laws 2013, LB283, § 6; Laws 2013, LB296, § 1; Laws 2014, LB987, § 2; Laws 2015, LB591, § 13; Laws 2016, LB756, § 1; Laws 2016, LB776, § 3; Laws 2018, LB738, § 1; Laws 2019, LB610, § 7; Laws 2020, LB153, § 1; Laws 2020, LB477, § 1; Laws 2020, LB1042, § 2; Laws 2021, LB64, § 1; Laws 2021, LB387, § 1; Laws 2021, LB432, § 12; Laws 2022, LB873, § 2; Laws 2022, LB1218, § 9; Laws 2022, LB1273, § 1.
Effective date July 21, 2022.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB873, section 2, with LB1218, section 9, and LB1273, section 1, to reflect all amendments.

Cross References

Firefighter Cancer Benefits Act, see section 35-1002.
Long-Term Care Savings Plan Act, see section 77-6101.
Nebraska Uniform Limited Liability Company Act, see section 21-101.
Teach in Nebraska Today Act, see section 79-8,146.

77-2716.01 Personal exemptions; standard deduction; computation.

(1)(a) Through tax year 2017, every individual shall be allowed to subtract from his or her income tax liability an amount for personal exemptions. The amount allowed to be subtracted shall be the credit amount for the year as provided in this subdivision multiplied by the number of exemptions allowed on the federal return. For tax year 1993, the credit amount shall be sixty-five dollars; for tax year 1994, the credit amount shall be sixty-nine dollars; for tax year 1995, the credit amount shall be sixty-nine dollars; for tax year 1996, the credit amount shall be seventy-two dollars; for tax year 1997, the credit amount shall be eighty-six dollars; for tax year 1998, the credit amount shall be eighty-eight dollars; for tax year 1999, and each year thereafter through tax year 2017, the credit amount shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as it existed prior to December 22, 2017. The eighty-eight-dollar credit amount shall be adjusted for cumulative inflation since 1998. If any credit amount is not an even dollar amount, the amount shall be rounded to the nearest dollar. For nonresident individuals and partial-year resident individuals, the personal exemption credit shall be subtracted as specified in subsection (3) of section 77-2715.

(b) Beginning with tax year 2018, every individual, except an individual that can be claimed for a child credit or dependent credit on the federal return of

another taxpayer, shall be allowed to subtract from his or her income tax liability an amount for personal exemptions. The amount allowed to be subtracted shall be the credit amount for the year as provided in this subdivision multiplied by the sum of the number of child credits and dependent credits taken on the federal return, plus two for a married filing jointly return or plus one for any other return. For tax year 2018, the credit amount shall be one hundred thirty-four dollars. For tax year 2019 and each tax year thereafter, the credit amount shall be adjusted for inflation based on the percentage change in the Consumer Price Index for All Urban Consumers published by the federal Bureau of Labor Statistics from the twelve months ending on August 31, 2017, to the twelve months ending on August 31 of the year preceding the taxable year. If any credit amount is not an even dollar amount, the amount shall be rounded to the nearest dollar. For nonresident individuals and partial-year resident individuals, the personal exemption credit shall be subtracted as specified in subsection (3) of section 77-2715.

(2)(a) For tax years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2004, under the Internal Revenue Code of 1986, as amended, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return except as the amount is adjusted under section 77-2716.03. The standard deduction shall be the smaller of the federal standard deduction actually allowed or (i) for single taxpayers four thousand seven hundred fifty dollars, (ii) for head of household taxpayers seven thousand dollars, (iii) for married filing jointly taxpayers seven thousand nine hundred fifty dollars, and (iv) for married filing separately taxpayers three thousand nine hundred seventy-five dollars. Taxpayers who are allowed additional federal standard deduction amounts because of age or blindness shall be allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return. The additional amounts shall be for married taxpayers, nine hundred fifty dollars, and for single or head of household taxpayers, one thousand one hundred fifty dollars.

(b) For tax years beginning or deemed to begin on or after January 1, 2007, and before January 1, 2018, under the Internal Revenue Code of 1986, as amended, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return. The standard deduction shall be the smaller of the federal standard deduction actually allowed or (i) for single taxpayers three thousand dollars and (ii) for head of household taxpayers four thousand four hundred dollars. The standard deduction for married filing jointly taxpayers shall be double the standard deduction for single taxpayers, and for married filing separately taxpayers, the standard deduction shall be the same as single taxpayers. Taxpayers who are allowed additional federal standard deduction amounts because of age or blindness shall be allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return. The additional amounts shall be for married taxpayers six hundred dollars and for single or head of household taxpayers seven hundred fifty dollars. The amounts in this subdivision will be indexed using 1987 as the base year.

(c) For tax years beginning or deemed to begin on or after January 1, 2007, and before January 1, 2018, the standard deduction amounts, including the

additional standard deduction amounts, in this subsection shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as it existed prior to December 22, 2017. If any amount is not a multiple of fifty dollars, the amount shall be rounded to the next lowest multiple of fifty dollars.

(3)(a) For tax years beginning or deemed to begin on or after January 1, 2018, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return. The standard deduction shall be the smaller of the federal standard deduction actually allowed or (i) six thousand seven hundred fifty dollars for single taxpayers and (ii) nine thousand nine hundred dollars for head of household taxpayers. The standard deduction for married filing jointly taxpayers or qualifying widows or widowers shall be double the standard deduction for single taxpayers, and the standard deduction for married filing separately taxpayers shall be the same as the standard deduction for single taxpayers. Taxpayers who are allowed additional federal standard deduction amounts because of age or blindness shall be allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return. The additional amounts shall be one thousand three hundred dollars for married taxpayers and one thousand six hundred dollars for single or head of household taxpayers.

(b) For tax years beginning or deemed to begin on or after January 1, 2019, the standard deduction amounts, including the additional standard deduction amounts, in this subsection shall be adjusted for inflation based on the percentage change in the Consumer Price Index for All Urban Consumers published by the federal Bureau of Labor Statistics from the twelve months ending on August 31, 2017, to the twelve months ending on August 31 of the year preceding the taxable year. If any amount is not a multiple of fifty dollars, the amount shall be rounded to the next lowest multiple of fifty dollars.

(4) Every individual who itemized deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income the greater of either the standard deduction allowed in this section or his or her federal itemized deductions as defined in section 63(d) of the Internal Revenue Code of 1986, as amended, except for the amount for state or local income taxes included in federal itemized deductions before any federal disallowance.

Source: Laws 1987, LB 773, § 10; Laws 1988, LB 1234, § 2; Laws 1989, LB 739, § 3; Laws 1991, LB 300, § 3; Laws 1993, LB 240, § 5; Laws 1997, LB 401, § 3; Laws 1998, LB 1028, § 4; Laws 2003, LB 596, § 2; Laws 2004, LB 355, § 1; Laws 2006, LB 968, § 10; Laws 2007, LB367, § 21; Laws 2018, LB1090, § 2; Laws 2019, LB512, § 20.

77-2717 Income tax; estates; trusts; rate; fiduciary return; contents; filing; state income tax; contents; credits.

(1)(a)(i) For taxable years beginning or deemed to begin before January 1, 2014, the tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement

plans. The additional taxes shall be recomputed by (A) substituting Nebraska taxable income for federal taxable income, (B) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (C) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the New Markets Job Growth Investment Act.

(ii) For taxable years beginning or deemed to begin on or after January 1, 2014, the tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by substituting Nebraska taxable income for federal taxable income and applying Nebraska rates to the result. The credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and sections 77-27,238 and 77-27,240.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage

Research and Development Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act. A nonrefundable income tax credit shall be allowed for all nonresident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and sections 77-27,238 and 77-27,240.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, the Renewable Chemical Production Tax Credit Act, and sections 77-27,238 and 77-27,240. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, the Renewable Chemical Production Tax Credit Act, and sections 77-27,238 and 77-27,240 and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a

portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. For taxable years beginning or deemed to begin before January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. For taxable years beginning or deemed to begin on or after January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

(6) The Tax Commissioner may allow a nonresident beneficiary to not file a Nebraska income tax return if the nonresident beneficiary's only source of Nebraska income was his or her share of the estate's or trust's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the estate or trust has remitted the amount required by subsection (5) of this section on behalf of such nonresident beneficiary. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident beneficiary.

(7) For purposes of this section, unless the context otherwise requires, simple trust shall mean any trust instrument which (a) requires that all income shall be distributed currently to the beneficiaries, (b) does not allow amounts to be paid, permanently set aside, or used in the tax year for charitable purposes, and (c) does not distribute amounts allocated in the corpus of the trust. Any trust which does not qualify as a simple trust shall be deemed a complex trust.

(8) For purposes of this section, any beneficiary of an estate or trust that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the beneficiary.

Source: Laws 1967, c. 487, § 17, p. 1579; Laws 1969, c. 690, § 1, p. 2683; Laws 1973, LB 531, § 1; Laws 1985, LB 273, § 51; Laws 1987, LB 523, § 21; Laws 1991, LB 773, § 14; Laws 1994, LB 977, § 14; Laws 2000, LB 1223, § 1; Laws 2001, LB 433, § 5; Laws 2005, LB 312, § 13; Laws 2006, LB 1003, § 6; Laws 2007, LB367, § 22; Laws 2008, LB915, § 1; Laws 2011, LB389, § 13; Laws 2012, LB970, § 6; Laws 2012, LB1128, § 23; Laws 2013, LB308, § 2; Laws 2014, LB191, § 18; Laws 2016, LB774, § 8; Laws 2016, LB884, § 20; Laws 2016, LB889, § 11; Laws 2020, LB1107, § 131; Laws 2022, LB917, § 4; Laws 2022, LB1261, § 11.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB917, section 4, with LB1261, section 11, to reflect all amendments.

Note: Changes made by LB917 became effective July 21, 2022. Changes made by LB1261 became operative July 21, 2022.

Cross References

Affordable Housing Tax Credit Act, see section 77-2501.
Angel Investment Tax Credit Act, see section 77-6301.
Beginning Farmer Tax Credit Act, see section 77-5201.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.
Nebraska Higher Blend Tax Credit Act, see section 77-7001.
Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

Nebraska Property Tax Incentive Act, see section 77-6701.
New Markets Job Growth Investment Act, see section 77-1101.
Renewable Chemical Production Tax Credit Act, see section 77-6601.
School Readiness Tax Credit Act, see section 77-3601.

77-2734.01 Small business corporation shareholders; limited liability company members; determination of income; credit; Tax Commissioner; powers; return; when required.

(1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the Nebraska Uniform Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's or limited liability company's federal income adjusted pursuant to this section. Income or loss from such corporation or limited liability company conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder or member who is a resident of this state to the extent of such shareholder's or member's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation or limited liability company. Compensation actually paid shall be presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair value for the services rendered or has been manipulated for tax avoidance purposes.

(2) The income of any small business corporation having an election in effect under subchapter S of the Internal Revenue Code or limited liability company organized pursuant to the Nebraska Uniform Limited Liability Company Act that is derived from or connected with Nebraska sources shall be determined in the following manner:

(a) If the small business corporation is a member of a unitary group, the small business corporation shall be deemed to be doing business within this state if any part of its income is derived from transactions with other members of the unitary group doing business within this state, and such corporation shall apportion its income by using the apportionment factor determined for the entire unitary group, including the small business corporation, under sections 77-2734.05 to 77-2734.15;

(b) If the small business corporation or limited liability company is not a member of a unitary group and is subject to tax in another state, it shall apportion its income under sections 77-2734.05 to 77-2734.15; and

(c) If the small business corporation or limited liability company is not subject to tax in another state, all of its income is derived from or connected with Nebraska sources.

(3) Nonresidents of Nebraska who are shareholders of such corporations or members of such limited liability companies shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income their proportionate share of the corporation's or limited liability company's Nebraska income as determined under subsection (2) of this section.

(4) The nonresident shareholder or member shall execute and forward to the corporation or limited liability company before the filing of the corporation's or

limited liability company's return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's or limited liability company's Nebraska return for such taxable year.

(5) For taxable years beginning or deemed to begin before January 1, 2013, in the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. For taxable years beginning or deemed to begin on or after January 1, 2013, in the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder or member.

(6) The Tax Commissioner may allow a nonresident individual shareholder or member to not file a Nebraska income tax return if the nonresident individual shareholder's or member's only source of Nebraska income was his or her share of the small business corporation's or limited liability company's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the small business corporation or limited liability company has remitted the amount required by subsection (5) of this section on behalf of such nonresident individual shareholder or member. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder or member.

(7) A small business corporation or limited liability company return shall be filed if the small business corporation or limited liability company has income derived from Nebraska sources.

(8) For purposes of this section, any shareholder or member of the corporation or limited liability company that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the shareholder or member.

Source: Laws 1984, LB 1124, § 4; Laws 1985, LB 273, § 54; Laws 1987, LB 523, § 23; Laws 1987, LB 773, § 18; Laws 1991, LB 773, § 16; Laws 1993, LB 121, § 508; Laws 2005, LB 216, § 12; Laws 2008, LB915, § 3; Laws 2010, LB888, § 105; Laws 2012, LB970, § 8; Laws 2013, LB283, § 7; Laws 2019, LB512, § 21.

Cross References

Nebraska Uniform Limited Liability Company Act, see section 21-101.

77-2734.02 Corporate taxpayer; income tax rate; how determined.

(1) Except as provided in subsection (2) of this section, a tax is hereby imposed on the taxable income of every corporate taxpayer that is doing business in this state:

(a) For taxable years beginning or deemed to begin before January 1, 2013, at a rate equal to one hundred fifty and eight-tenths percent of the primary rate imposed on individuals under section 77-2701.01 on the first one hundred thousand dollars of taxable income and at the rate of two hundred eleven percent of such rate on all taxable income in excess of one hundred thousand dollars. The resultant rates shall be rounded to the nearest one hundredth of one percent;

(b) For taxable years beginning or deemed to begin on or after January 1, 2013, and before January 1, 2022, at a rate equal to 5.58 percent on the first one hundred thousand dollars of taxable income and at the rate of 7.81 percent on all taxable income in excess of one hundred thousand dollars;

(c) For taxable years beginning or deemed to begin on or after January 1, 2022, and before January 1, 2023, at a rate equal to 5.58 percent on the first one hundred thousand dollars of taxable income and at the rate of 7.50 percent on all taxable income in excess of one hundred thousand dollars;

(d) For taxable years beginning or deemed to begin on or after January 1, 2023, and before January 1, 2024, at a rate equal to 5.58 percent on the first one hundred thousand dollars of taxable income and at the rate of 7.25 percent on all taxable income in excess of one hundred thousand dollars;

(e) For taxable years beginning or deemed to begin on or after January 1, 2024, and before January 1, 2025, at a rate equal to 5.58 percent on the first one hundred thousand dollars of taxable income and at the rate of 6.50 percent on all taxable income in excess of one hundred thousand dollars;

(f) For taxable years beginning or deemed to begin on or after January 1, 2025, and before January 1, 2026, at a rate equal to 5.58 percent on the first one hundred thousand dollars of taxable income and at the rate of 6.24 percent on all taxable income in excess of one hundred thousand dollars;

(g) For taxable years beginning or deemed to begin on or after January 1, 2026, and before January 1, 2027, at a rate equal to 5.58 percent on the first one hundred thousand dollars of taxable income and at the rate of 6.00 percent on all taxable income in excess of one hundred thousand dollars; and

(h) For taxable years beginning or deemed to begin on or after January 1, 2027, at a rate equal to 5.58 percent on the first one hundred thousand dollars of taxable income and at the rate of 5.84 percent on all taxable income in excess of one hundred thousand dollars.

For corporate taxpayers with a fiscal year that does not coincide with the calendar year, the individual rate used for this subsection shall be the rate in effect on the first day, or the day deemed to be the first day, of the taxable year.

(2) An insurance company shall be subject to taxation at the lesser of the rate described in subsection (1) of this section or the rate of tax imposed by the state or country in which the insurance company is domiciled if the insurance company can establish to the satisfaction of the Tax Commissioner that it is domiciled in a state or country other than Nebraska that imposes on Nebraska domiciled insurance companies a retaliatory tax against the tax described in subsection (1) of this section.

(3) For a corporate taxpayer that is subject to tax in another state, its taxable income shall be the portion of the taxpayer's federal taxable income, as adjusted, that is determined to be connected with the taxpayer's operations in this state pursuant to sections 77-2734.05 to 77-2734.15.

(4) Each corporate taxpayer shall file only one income tax return for each taxable year.

Source: Laws 1984, LB 1124, § 5; Laws 1987, LB 773, § 19; Laws 1995, LB 300, § 2; Laws 2008, LB888, § 1; Laws 2012, LB970, § 9; Laws 2021, LB432, § 13; Laws 2022, LB873, § 3.
Effective date July 21, 2022.

77-2734.03 Income tax; tax credits.

(1)(a) For taxable years commencing prior to January 1, 1997, any (i) insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, (ii) electric cooperative organized under the Joint Public Power Authority Act, or (iii) credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as taxes on such premiums and assessments and taxes in lieu of intangible tax.

(b) For taxable years commencing on or after January 1, 1997, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, any electric cooperative organized under the Joint Public Power Authority Act, or any credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as (i) taxes on such premiums and assessments included as Nebraska premiums and assessments under section 77-2734.05 and (ii) taxes in lieu of intangible tax.

(c) For taxable years commencing or deemed to commence prior to, on, or after January 1, 1998, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523 shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as assessments allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

(2) There shall be allowed to corporate taxpayers a tax credit for contributions to community betterment programs as provided in the Community Development Assistance Act.

(3) There shall be allowed to corporate taxpayers a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended.

(5) There shall be allowed to corporate taxpayers refundable income tax credits under the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Property Tax Incentive Act, and the Renewable Chemical Production Tax Credit Act.

(6) There shall be allowed to corporate taxpayers a nonrefundable income tax credit for investment in a biodiesel facility as provided in section 77-27,236.

(7) There shall be allowed to corporate taxpayers a nonrefundable income tax credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act, the New Markets Job Growth Investment Act, the School Readiness Tax Credit Act, the Affordable Housing Tax Credit Act, and sections 77-27,238 and 77-27,240.

Source: Laws 1984, LB 1124, § 6; Laws 1985, LB 273, § 55; Laws 1986, LB 1114, § 19; Laws 1992, LB 719A, § 176; Laws 1992, LB 1063, § 184; Laws 1993, LB 5, § 4; Laws 1993, LB 815, § 25; Laws 1996, LB 898, § 6; Laws 1997, LB 55, § 4; Laws 1997, LB 61, § 1; Laws 1998, LB 1035, § 24; Laws 2000, LB 1223, § 2; Laws 2001, LB 433, § 6; Laws 2004, LB 983, § 68; Laws 2005, LB 312, § 14; Laws 2007, LB343, § 6; Laws 2007, LB367, § 23; Laws 2012, LB1128, § 24; Laws 2014, LB191, § 19; Laws 2016, LB774, § 9; Laws 2016, LB884, § 21; Laws 2016, LB889, § 12; Laws 2020, LB1107, § 132; Laws 2022, LB917, § 5; Laws 2022, LB1261, § 12.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB917, section 5, with LB1261, section 12, to reflect all amendments.

Note: Changes made by LB917 became effective July 21, 2022. Changes made by LB1261 became operative July 21, 2022.

Cross References

Affordable Housing Tax Credit Act, see section 77-2501.
Beginning Farmer Tax Credit Act, see section 77-5201.
Community Development Assistance Act, see section 13-201.
Joint Public Power Authority Act, see section 70-1401.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.
Nebraska Higher Blend Tax Credit Act, see section 77-7001.
Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.
Nebraska Property Tax Incentive Act, see section 77-6701.
New Markets Job Growth Investment Act, see section 77-1101.
Renewable Chemical Production Tax Credit Act, see section 77-6601.
School Readiness Tax Credit Act, see section 77-3601.

77-2761 Income tax; return; required by whom.

An income tax return with respect to the income tax imposed by the provisions of the Nebraska Revenue Act of 1967 shall be made by the following:

(1) Every resident individual who is required to file a federal income tax return for the taxable year;

(2) Every nonresident individual who has income from Nebraska sources;

(3) Every resident estate or trust which is required to file a federal income tax return except a simple trust not required to file under subsection (2) of section 77-2717;

(4) Every nonresident estate or trust which has taxable income from Nebraska sources;

(5) Every corporation or any other entity taxed as a corporation under the Internal Revenue Code which is required to file a federal income tax return except the small business corporations not required to file under subsection (7) of section 77-2734.01;

(6) Every limited liability company having income derived from Nebraska sources; and

(7) Every partnership having income derived from Nebraska sources.

Source: Laws 1967, c. 487, § 61, p. 1598; Laws 1987, LB 523, § 25; Laws 1993, LB 121, § 510; Laws 2009, LB165, § 13; Laws 2019, LB512, § 22.

77-2773 Income tax; partnership; taxable year; return.

Every partnership having part of its income derived from Nebraska sources, determined in accordance with the applicable rules of section 77-2733 as in the case of a nonresident individual, shall make a return for the taxable year setting forth such pertinent information as the Tax Commissioner by rule and regulation may prescribe. Such information may include, but shall not be limited to, all items of income, gain, loss, and deduction, the names and addresses of the individuals whether residents or nonresidents who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. Such return shall be filed on or before the date prescribed for filing a federal partnership return. For purposes of this section, taxable year shall mean a year or period which would be a taxable year of the partnership if it were subject to tax under the provisions of the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 73, p. 1603; Laws 1987, LB 523, § 28; Laws 2019, LB512, § 23.

77-2776 Income tax; Tax Commissioner; return; examination; failure to file; notice; deficiency; notice.

(1) As soon as practical after an income tax return is filed, the Tax Commissioner shall examine it to determine the correct amount of tax. If the Tax Commissioner finds that the amount of tax shown on the return is less than the correct amount, he or she shall notify the taxpayer of the amount of the deficiency proposed to be assessed. If the Tax Commissioner finds that the tax paid is more than the correct amount, he or she shall credit the overpayment against any taxes due by the taxpayer and refund the difference. The Tax Commissioner shall, upon request, make prompt assessment of taxes due as provided by the laws of the United States for federal income tax purposes.

(2) If the taxpayer fails to file an income tax return, the Tax Commissioner shall estimate the taxpayer's tax liability from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

(3) A notice of deficiency shall set forth the reason for the proposed assessment or for the change in the amount of credit or loss to be carried over to another year. The notice may be mailed to the taxpayer at his or her last-known address. In the case of a joint return, the notice of deficiency may be a single joint notice, except that if the Tax Commissioner is notified by either spouse that separate residences have been established, the Tax Commissioner shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last-known address unless the Tax Commissioner has received notice of the existence of a fiduciary relationship with respect to such taxpayer.

(4) A notice of deficiency regarding an item of entity income may be mailed to the entity at its last-known address or to the address of the entity's tax matters person for federal income tax purposes. Such notice shall be deemed to have been received by each partner, shareholder, or member of such entity, but

only for items of entity income reported by the partner, shareholder, or member. The actions taken thereon on behalf of the partnership, limited liability company, small business corporation, estate, or trust are binding on the partners, members, shareholders, or beneficiaries.

Source: Laws 1967, c. 487, § 76, p. 1604; Laws 2005, LB 216, § 16; Laws 2012, LB727, § 41; Laws 2019, LB512, § 24.

77-27,119 Income tax; Tax Commissioner; administer and enforce sections; prescribe forms; content; examination of return or report; uniform school district numbering system; audit by Auditor of Public Accounts or office of Legislative Audit; wrongful disclosure; exception; penalty.

(1) The Tax Commissioner shall administer and enforce the income tax imposed by sections 77-2714 to 77-27,135, and he or she is authorized to conduct hearings, to adopt and promulgate such rules and regulations, and to require such facts and information to be reported as he or she may deem necessary to enforce the income tax provisions of such sections, except that such rules, regulations, and reports shall not be inconsistent with the laws of this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2)(a) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions. Such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States. The form shall have a place where the taxpayer shall designate the school district in which he or she lives and the county in which the school district is headquartered. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure compliance with this requirement.

(b) The State Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform system for numbering all school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue and shall be used for the school district identification required by subdivision (a) of this subsection.

(c) The proper filing of an income tax return shall consist of the submission of such form as prescribed by the Tax Commissioner or an exact facsimile thereof with sufficient information provided by the taxpayer on the face of the form from which to compute the actual tax liability. Each taxpayer shall include such taxpayer's correct social security number or state identification number and the school district identification number of the school district in which the taxpayer resides on the face of the form. A filing is deemed to occur when the required information is provided.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other document required to be filed under the income tax provisions, for the purpose of determining corporate income, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters and may by summons require the attendance of the person responsible for rendering such return or other document or remitting any tax, or any

officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons.

(4) The time and place of examination pursuant to this section shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, any person who pursuant to this section is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is furnished, any employee of the State Treasurer or the Department of Administrative Services, or any other person to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of the tax law to which he or she is a party or on behalf of any party to any action or proceeding under such sections when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General, other legal representatives of the state, or a county attorney of the report or return of any taxpayer who brings an action to review the tax based thereon, against whom an action or proceeding for collection of tax has been instituted, or against whom an action, proceeding, or prosecution for failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) to prohibit furnishing to the Nebraska Workers' Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, (e) to prohibit the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of information pursuant to section 77-27,195, 77-4110, 77-5731, 77-6521, 77-6837, 77-6839, or 77-6928, (g) to prohibit the disclosure to the Public Employees Retirement Board of the addresses of individuals who are members of the retirement systems administered by the board, and such information shall be

furnished to the board solely for purposes of its administration of the retirement systems upon written request, which request shall include the name and social security number of each individual for whom an address is requested, (h) to prohibit the disclosure of information to the Department of Labor necessary for the administration of the Employment Security Law, the Contractor Registration Act, or the Employee Classification Act, (i) to prohibit the disclosure to the Department of Motor Vehicles of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Motor Vehicles to be delinquent in the payment of amounts due under agreements pursuant to the International Fuel Tax Agreement Act, and such disclosure shall be strictly limited to information necessary for the administration of the act, (j) to prohibit the disclosure under section 42-358.08, 43-512.06, or 43-3327 to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Health and Human Services of an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child, spousal, or medical support, (k) to prohibit the disclosure of information to the Department of Insurance, the Nebraska State Historical Society, or the State Historic Preservation Officer as necessary to carry out the Department of Revenue's responsibilities under the Nebraska Job Creation and Mainstreet Revitalization Act, or (l) to prohibit the disclosure to the Department of Insurance of information pertaining to authorization for, and use of, tax credits under the New Markets Job Growth Investment Act. Information so obtained shall be used for no other purpose. Any person who violates this subsection shall be guilty of a felony and shall upon conviction thereof be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court and shall be assessed the costs of prosecution. If the offender is an officer or employee of the state, he or she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections 77-2714 to 77-27,135 shall be preserved until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury of the United States or his or her delegates or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer or may furnish to such officer or his or her authorized representative an abstract of the return of income of any taxpayer or supply him or her with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by sections 77-2714 to 77-27,135.

(9) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the

reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(10)(a) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the office of Legislative Audit, make tax returns and tax return information open to inspection by or disclosure to officers and employees of the Auditor of Public Accounts or employees of the office of Legislative Audit for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. The Auditor of Public Accounts or office of Legislative Audit shall statistically and randomly select the tax returns and tax return information to be audited based upon a computer tape provided by the Department of Revenue which contains only total population documents without specific identification of taxpayers. The Tax Commissioner shall have the authority to approve the statistical sampling method used by the Auditor of Public Accounts or office of Legislative Audit. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) When selecting tax returns or tax return information for a performance audit of a tax incentive program, the office of Legislative Audit shall select the tax returns or tax return information for either all or a statistically and randomly selected sample of taxpayers who have applied for or who have qualified for benefits under the tax incentive program that is the subject of the audit. When the office of Legislative Audit reports on its review of tax returns and tax return information, it shall comply with subdivision (10)(c) of this section.

(c) No officer or employee of the Auditor of Public Accounts or office of Legislative Audit employee shall disclose to any person, other than another officer or employee of the Auditor of Public Accounts or office of Legislative Audit whose official duties require such disclosure, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(d) Any person who violates the provisions of this subsection shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution. The guilty officer or employee shall be dismissed from employment and be ineligible to hold any position of employment with the State of Nebraska for a period of two years thereafter. For purposes of this subsection, officer or employee shall include a former officer or employee of the Auditor of Public Accounts or former employee of the office of Legislative Audit.

(11) For purposes of subsections (10) through (13) of this section:

(a) Tax returns shall mean any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2714 to 77-27,135 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting

schedules, attachments, or lists which are supplemental to or part of the filed return;

(b) Return information shall mean:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Disclosures shall mean the making known to any person in any manner a return or return information.

(12) The Auditor of Public Accounts shall (a) notify the Tax Commissioner in writing thirty days prior to the beginning of an audit of his or her intent to conduct an audit, (b) provide an audit plan, and (c) provide a list of the tax returns and tax return information identified for inspection during the audit. The office of Legislative Audit shall notify the Tax Commissioner of the intent to conduct an audit and of the scope of the audit as provided in section 50-1209.

(13) The Auditor of Public Accounts or the office of Legislative Audit shall, as a condition for receiving tax returns and tax return information: (a) Subject employees involved in the audit to the same confidential information safeguards and disclosure procedures as required of Department of Revenue employees; (b) establish and maintain a permanent system of standardized records with respect to any request for tax returns or tax return information, the reason for such request, and the date of such request and any disclosure of the tax return or tax return information; (c) establish and maintain a secure area or place in the Department of Revenue in which the tax returns, tax return information, or audit workpapers shall be stored; (d) restrict access to the tax returns or tax return information only to persons whose duties or responsibilities require access; (e) provide such other safeguards as the Tax Commissioner determines to be necessary or appropriate to protect the confidentiality of the tax returns or tax return information; (f) provide a report to the Tax Commissioner which describes the procedures established and utilized by the Auditor of Public Accounts or office of Legislative Audit for insuring the confidentiality of tax returns, tax return information, and audit workpapers; and (g) upon completion of use of such returns or tax return information, return to the Tax Commissioner such returns or tax return information, along with any copies.

(14) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under sections 77-2714 to 77-27,135, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(15) The Tax Commissioner shall compile the school district information required by subsection (2) of this section. Insofar as it is possible, such compilation shall include, but not be limited to, the total adjusted gross income of each school district in the state. The Tax Commissioner shall adopt and

promulgate such rules and regulations as may be necessary to insure that such compilation does not violate the confidentiality of any individual income tax return nor conflict with any other provisions of state or federal law.

Source: Laws 1967, c. 487, § 119, p. 1628; Laws 1969, c. 694, § 1, p. 2689; Laws 1971, LB 527, § 1; Laws 1971, LB 571, § 1; Laws 1973, LB 526, § 6; Laws 1979, LB 302, § 1; Laws 1981, LB 170, § 7; Laws 1984, LB 962, § 32; Laws 1985, LB 273, § 68; Laws 1985, LB 344, § 8; Laws 1985, LB 345, § 1; Laws 1989, LB 611, § 3; Laws 1990, LB 431, § 1; Laws 1991, LB 549, § 22; Laws 1993, LB 46, § 17; Laws 1993, LB 345, § 72; Laws 1997, LB 129, § 2; Laws 1997, LB 720, § 23; Laws 1997, LB 806, § 3; Laws 2002, LB 989, § 19; Laws 2005, LB 216, § 18; Laws 2005, LB 312, § 15; Laws 2006, LB 588, § 9; Laws 2006, LB 956, § 11; Laws 2008, LB915, § 6; Laws 2010, LB563, § 15; Laws 2010, LB879, § 17; Laws 2013, LB39, § 13; Laws 2014, LB191, § 20; Laws 2014, LB851, § 14; Laws 2015, LB539, § 7; Laws 2016, LB1022, § 5; Laws 2020, LB1107, § 133; Laws 2021, LB528, § 20; Laws 2021, LB544, § 32.

Cross References

Contractor Registration Act, see section 48-2101.
Employee Classification Act, see section 48-2901.
Employment Security Law, see section 48-601.
International Fuel Tax Agreement Act, see section 66-1401.
Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.
New Markets Job Growth Investment Act, see section 77-1101.

(d) GENERAL PROVISIONS

77-27,132 Revenue Distribution Fund; created; use; collections under act; disposition.

(1) There is hereby created a fund to be designated the Revenue Distribution Fund which shall be set apart and maintained by the Tax Commissioner. Revenue not required to be credited to the General Fund or any other specified fund may be credited to the Revenue Distribution Fund. Credits and refunds of such revenue shall be paid from the Revenue Distribution Fund. The balance of the amount credited, after credits and refunds, shall be allocated as provided by the statutes creating such revenue.

(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the Nebraska Revenue Act of 1967. The Tax Commissioner shall present to the State Treasurer bank receipts showing amounts so deposited in the bank, and of the amounts so deposited the State Treasurer shall:

(a) For transactions occurring on or after October 1, 2014, and before October 1, 2027, credit to the Game and Parks Commission Capital Maintenance Fund all of the proceeds of the sales and use taxes imposed pursuant to section 77-2703 on the sale or lease of motorboats as defined in section 37-1204, personal watercraft as defined in section 37-1204.01, all-terrain vehicles as defined in section 60-103, and utility-type vehicles as defined in section 60-135.01;

(b) Credit to the Highway Trust Fund all of the proceeds of the sales and use taxes derived from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers, except that the proceeds equal to any

sales tax rate provided for in section 77-2701.02 that is in excess of five percent derived from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers shall be credited to the Highway Allocation Fund;

(c) For transactions occurring on or after July 1, 2013, and before July 1, 2033, of the proceeds of the sales and use taxes derived from transactions other than those listed in subdivisions (2)(a) and (b) of this section from a sales tax rate of one-quarter of one percent, credit monthly eighty-five percent to the State Highway Capital Improvement Fund and fifteen percent to the Highway Allocation Fund; and

(d) Of the proceeds of the sales and use taxes derived from transactions other than those listed in subdivisions (2)(a) and (b) of this section, credit to the Property Tax Credit Cash Fund the amount certified under section 77-27,237, if any such certification is made.

The balance of all amounts collected under the Nebraska Revenue Act of 1967 shall be credited to the General Fund.

Source: Laws 1967, c. 487, § 132, p. 1636; Laws 1969, c. 695, § 1, p. 2692; Laws 1969, c. 313, § 2, p. 1130; Laws 1971, LB 53, § 9; Laws 1972, LB 343, § 23; Laws 1975, LB 233, § 2; Laws 1976, LB 868, § 1; Laws 1984, LB 466, § 5; Laws 1986, LB 599, § 23; Laws 1986, LB 539, § 3; Laws 1987, LB 730, § 30; Laws 1989, LB 258, § 11; Laws 2003, LB 759, § 22; Laws 2006, LB 904, § 4; Laws 2007, LB305, § 1; Laws 2011, LB84, § 6; Laws 2014, LB814, § 11; Laws 2015, LB200, § 2; Laws 2017, LB331, § 42; Laws 2021, LB595, § 10.

(e) GOVERNMENTAL SUBDIVISION AID

77-27,139.04 Aid to municipalities; funds; how distributed.

The Department of Revenue shall determine the amount to be distributed to the various municipalities and certify such amounts by voucher to the Director of Administrative Services. The Municipal Equalization Fund shall be distributed on or before the first day of October, January, April, and July of each state fiscal year beginning in fiscal year 1998-99. The director shall, upon receipt of such notification and vouchers, pay the amounts electronically from funds appropriated. The proceeds of the payments received by the various municipalities shall be credited to the general fund of the municipality.

Source: Laws 1996, LB 1177, § 4; Laws 2021, LB509, § 12.

(g) LOCAL OPTION REVENUE ACT

77-27,144 Municipalities; sales and use tax; Tax Commissioner; collection; distribution; refunds; notice; deductions; qualifying business; duty to provide information.

(1) The Tax Commissioner shall collect the tax imposed by any incorporated municipality concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the incorporated municipalities levying the tax, after deducting the amount of refunds made and three percent of the remainder to be credited to the Municipal Equalization Fund.

(2)(a) Deductions for a refund made pursuant to section 77-4105, 77-4106, 77-5725, or 77-5726 and owed by a city of the first class, city of the second class, or village shall be delayed for one year after the refund has been made to the taxpayer. The Department of Revenue shall notify the municipality liable for a refund exceeding one thousand five hundred dollars of the pending refund, the amount of the refund, and the month in which the deduction will be made or begin, except that if the amount of a refund claimed under section 77-4105, 77-4106, 77-5725, or 77-5726 exceeds twenty-five percent of the municipality's total sales and use tax receipts, net of any refunds or sales tax collection fees, for the municipality's prior fiscal year, the department shall deduct the refund over the period of one year in equal monthly amounts beginning after the one-year notification period required by this subdivision.

(b) Deductions for a refund made pursuant to section 77-4105, 77-4106, 77-5725, or 77-5726 and owed by a city of the metropolitan class or city of the primary class shall be made as follows:

(i) During calendar year 2023, such deductions shall be made in accordance with subsection (1) of this section; and

(ii) During calendar year 2024 and each calendar year thereafter, such deductions shall be made based on estimated amounts as described in this subdivision. On or before March 1, 2023, and on or before March 1 of each year thereafter, the Department of Revenue shall notify each city of the metropolitan class and city of the primary class of the total amount of such refunds that are estimated to be paid during the following calendar year. Such estimated amount shall be used to establish the total amount to be deducted in the following calendar year. The department shall deduct such amount over the following calendar year in twelve equal monthly amounts. Beginning with the notification sent in calendar year 2025, the notification shall include any adjustment needed for the prior calendar year to account for any difference between the estimated amount deducted in such prior calendar year and the actual amount of refunds paid in such year.

(3) Deductions for a refund made pursuant to the ImagiNE Nebraska Act shall be delayed as provided in this subsection after the refund has been made to the taxpayer. The Department of Revenue shall notify each municipality liable for a refund exceeding one thousand five hundred dollars of the pending refund and the amount of the refund claimed under the ImagiNE Nebraska Act. The notification shall be made by March 1 of each year beginning in 2021 and shall be used to establish the refund amount for the following calendar year. The notification shall include any excess or underpayment from the prior calendar year. The department shall deduct the refund over a period of one year in equal monthly amounts beginning in January following the notification. This subsection applies to total annual refunds exceeding one million dollars or twenty-five percent of the municipality's total sales and use tax receipts for the prior fiscal year, whichever is the lesser amount.

(4) Deductions for a refund made pursuant to the Urban Redevelopment Act shall be delayed as provided in this subsection after the refund has been made to the taxpayer. The Department of Revenue shall notify each municipality liable for a refund exceeding one thousand five hundred dollars of the pending refund and the amount of the refund claimed under the Urban Redevelopment Act. The notification shall be made by March 1 of each year beginning in 2022 and shall be used to establish the refund amount for the following calendar

year. The notification shall include any excess or underpayment from the prior calendar year. The department shall deduct the refund over a period of one year in equal monthly amounts beginning in January following the notification. This subsection applies to total annual refunds exceeding one million dollars or twenty-five percent of the municipality's total sales and use tax receipts for the prior fiscal year, whichever is the lesser amount.

(5) The Tax Commissioner shall keep full and accurate records of all money received and distributed under the provisions of the Local Option Revenue Act. When proceeds of a tax levy are received but the identity of the incorporated municipality which levied the tax is unknown and is not identified within six months after receipt, the amount shall be credited to the Municipal Equalization Fund. The municipality may request the names and addresses of the retailers which have collected the tax as provided in subsection (13) of section 77-2711 and may certify an individual to request and review confidential sales and use tax returns and sales and use tax return information as provided in subsection (14) of section 77-2711.

(6)(a) Every qualifying business that has filed an application to receive tax incentives under the Employment and Investment Growth Act, the Nebraska Advantage Act, the ImagiNE Nebraska Act, or the Urban Redevelopment Act shall, with respect to such acts, provide annually to each municipality, in aggregate data, the maximum amount the qualifying business is eligible to receive in the current year in refunds of local sales and use taxes of the municipality and exemptions for the previous year, and the estimate of annual refunds of local sales and use taxes of the municipality and exemptions such business intends to claim in each future year. Such information shall be kept confidential by the municipality unless publicly disclosed previously by the taxpayer or by the State of Nebraska.

(b) For purposes of this subsection, municipality means a municipality that has adopted the local option sales and use tax under the Local Option Revenue Act and to which the qualifying business has paid such sales and use tax.

(c) The qualifying business shall provide the information to the municipality on or before June 30 of each year.

(d) Any amounts held by a municipality to make sales and use tax refunds under the Employment and Investment Growth Act, the Nebraska Advantage Act, the ImagiNE Nebraska Act, and the Urban Redevelopment Act shall not count toward any budgeted restricted funds limitation as provided in section 13-519 or toward any cash reserve limitation as provided in section 13-504.

Source: Laws 1969, c. 629, § 3, p. 2530; Laws 1971, LB 53, § 10; Laws 1976, LB 868, § 2; Laws 1996, LB 1177, § 19; Laws 1998, LB 1104, § 13; Laws 2007, LB94, § 2; Laws 2012, LB209, § 2; Laws 2014, LB867, § 16; Laws 2014, LB1067, § 1; Laws 2020, LB1107, § 134; Laws 2021, LB544, § 33; Laws 2022, LB1150, § 3.
Operative date January 1, 2023.

Cross References

Employment and Investment Growth Act, see section 77-4101.
ImagiNE Nebraska Act, see section 77-6801.
Local Option Revenue Act, see section 77-27,148.
Nebraska Advantage Act, see section 77-5701.
Urban Redevelopment Act, see section 77-6901.

(h) AIR AND WATER POLLUTION CONTROL TAX REFUND ACT

77-27,150 Refund; application; when; contents; hearing; approval.

(1) An application for a refund of Nebraska sales and use taxes paid for any air or water pollution control facility may be filed with the Tax Commissioner by the owner of such facility in such manner and in such form as may be prescribed by the commissioner. The application for a refund shall contain: (a) Plans and specifications of such facility including all materials incorporated therein; (b) a descriptive list of all equipment acquired by the applicant for the purpose of industrial or agricultural waste pollution control; (c) the proposed operating procedure for the facility; (d) the acquisition cost of the facility for which a refund is claimed; and (e) a copy of the final findings of the Department of Environment and Energy issued pursuant to section 77-27,151.

(2) The Tax Commissioner shall offer an applicant a hearing upon request of such applicant. The hearing shall not affect the authority of the Department of Environment and Energy to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act.

(3) A claim for refund received without a copy of the final findings of the Department of Environment and Energy issued pursuant to section 77-27,151 shall not be considered a valid claim and shall be returned to the applicant.

(4) Notice of the Tax Commissioner's refusal to issue a refund shall be mailed to the applicant.

Source: Laws 1972, LB 716, § 2; Laws 1974, LB 820, § 4; Laws 1977, LB 308, § 1; Laws 1978, LB 244, § 1; Laws 1993, LB 3, § 43; Laws 2002, LB 989, § 20; Laws 2012, LB727, § 45; Laws 2019, LB302, § 96.

77-27,151 Refund; notice to Tax Commissioner; Department of Environment and Energy; duties.

If the Department of Environment and Energy finds that a facility or multiple facilities at a single location are designed and operated primarily for control, capture, abatement, or removal of industrial or agricultural waste from air or water and are suitable, are reasonably adequate, and meet the intent and purposes of the Environmental Protection Act, the Department of Environment and Energy shall so notify the owner of the facility in writing of its findings that the facility, multiple facilities, or the specified portions of any facility are approved. The Department of Environment and Energy shall also notify the Tax Commissioner of its findings and the extent of commercial or productive value derived from any materials captured or recovered by the facility.

Source: Laws 1972, LB 716, § 3; Laws 1974, LB 820, § 5; Laws 1977, LB 308, § 2; Laws 1993, LB 3, § 44; Laws 2002, LB 989, § 21; Laws 2019, LB302, § 97.

Cross References

Environmental Protection Act, see section 81-1532.

77-27,152 Refund; notice; modify or revoke; when; effect.

(1) The Tax Commissioner, after giving notice by mail to the applicant and giving an opportunity for a hearing, shall modify or revoke the refund whenever

the following appears: (a) The refund was obtained by fraud or misrepresentation regarding the payment of tax on materials incorporated into the facility or facilities; or (b) the Department of Environment and Energy has modified its findings regarding the facility covered by the refund.

(2) The Department of Environment and Energy may modify its findings when it determines any of the following: (a) The refund was obtained by fraud or misrepresentation regarding the facility or planned operation of the facility; (b) the applicant has failed substantially to operate the facility for the purpose and degree of control specified in the application or an amended application; or (c) the facility covered by the refund is no longer used for the primary purpose of pollution control.

(3) On the mailing to the refund applicant of notice of the action of the Tax Commissioner modifying or revoking the refund, the refund shall cease to be in force or shall remain in force only as modified. When a refund is revoked because a refund was obtained by fraud or misrepresentation, all taxes which would have been payable if no certificate had been issued shall be immediately due and payable with the maximum interest and penalties prescribed by the Nebraska Revenue Act of 1967. No statute of limitations shall operate in the event of fraud or misrepresentation.

Source: Laws 1972, LB 716, § 4; Laws 1977, LB 308, § 3; Laws 1993, LB 3, § 45; Laws 2002, LB 989, § 22; Laws 2012, LB727, § 46; Laws 2019, LB302, § 98.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-27,153 Appeal; procedure.

(1) A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax refund may appeal from the finding and order of the Tax Commissioner. The finding and order shall not affect the authority of the Department of Environment and Energy to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The Department of Environment and Energy shall make its findings for the Air and Water Pollution Control Tax Refund Act in accordance with its normal administrative procedures. Nothing in the act is intended to affect the department's authority to make findings and to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the act.

Source: Laws 1972, LB 716, § 5; Laws 1988, LB 352, § 160; Laws 2002, LB 989, § 23; Laws 2019, LB302, § 99.

Cross References

Administrative Procedure Act, see section 84-920.

77-27,154 Rules and regulations.

The Tax Commissioner may adopt and promulgate rules and regulations that are necessary for the administration of the Air and Water Pollution Control Tax Refund Act. Such rules and regulations shall not abridge the authority of the

Department of Environment and Energy to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the act.

Source: Laws 1972, LB 716, § 6; Laws 1977, LB 308, § 4; Laws 1993, LB 3, § 46; Laws 2002, LB 989, § 24; Laws 2019, LB302, § 100.

(i) ECONOMIC FORECASTING

77-27,157 Board; membership; terms; officers; quorum; expenses.

The Nebraska Economic Forecasting Advisory Board shall consist of nine members, five of whom shall be appointed by and serve at the pleasure of the Executive Board of the Legislative Council and four of whom shall be appointed by and serve at the pleasure of the Governor. The original gubernatorial appointees shall serve for two-year terms. Successive gubernatorial appointees and all legislative appointees shall serve for four-year terms. After appointments are made, the board shall select a chairperson and a vice-chairperson from its membership. The chairperson and vice-chairperson shall serve for two-year terms. The chairperson of the board on September 6, 1985, shall serve until his or her successor is selected. Each member of the board shall have demonstrated expertise in the field of tax policy, economics, or economic forecasting. A majority of the members of the board shall constitute a quorum for the purpose of transacting business and every act of a majority of the members shall be deemed an act of the board. Board members shall serve without compensation but may be reimbursed for expenses as provided in sections 81-1174 to 81-1177. Board members appointed by the Legislative Council shall receive such reimbursement out of the appropriation made to the Legislature's Fiscal and Program Analysis Program. Board members appointed by the Governor shall receive such reimbursement out of the appropriation made to the Department of Revenue for administration.

Source: Laws 1984, LB 892, § 4; Laws 1985, LB 283, § 1; Laws 2020, LB381, § 84.

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

77-27,187.01 Terms, defined.

For purposes of the Nebraska Advantage Rural Development Act, unless the context otherwise requires:

(1) Any term has the same meaning as used in the Nebraska Revenue Act of 1967;

(2) Equivalent employees means the number of employees computed by dividing the total hours paid in a year to employees by the product of forty times the number of weeks in a year;

(3) Livestock means all animals, including cattle, horses, sheep, goats, hogs, dairy animals, chickens, turkeys, and other species of game birds and animals raised and produced subject to permit and regulation by the Game and Parks Commission or the Department of Agriculture;

(4) Livestock modernization or expansion means the construction, improvement, or acquisition of buildings, facilities, or equipment for livestock housing, confinement, feeding, production, and waste management. Livestock modernization or expansion does not include any improvements made to correct a violation of the Environmental Protection Act, the Integrated Solid Waste

Management Act, the Livestock Waste Management Act, a rule or regulation adopted and promulgated pursuant to such acts, or any order of the Department of Environment and Energy undertaken within five years after a complaint issued from the Director of Environment and Energy under section 81-1507;

(5) Livestock production means the active use, management, and operation of real and personal property (a) for the commercial production of livestock, (b) for the commercial breeding, training, showing, or racing of horses or for the use of horses in a recreational or tourism enterprise, and (c) for the commercial production of dairy and eggs. The activity will be considered commercial if the gross income derived from an activity for two or more of the taxable years in the period of seven consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity or, if the operation has been in existence for less than seven years, if the activity is engaged in for the purpose of generating a profit;

(6) Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(7) Related taxpayers includes any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967 but are not part of the same corporate taxpayer, any business entities that are not corporations but which would be a part of the unitary business if they were corporations, and any business entities if at least fifty percent of such entities are owned by the same persons or related taxpayers and family members as defined in the ownership attribution rules of the Internal Revenue Code of 1986, as amended;

(8) Taxpayer means a corporate taxpayer or other person subject to either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under Chapter 77, article 38, or a partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are, subject to or exempt from such taxes, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are subject to or exempt from such taxes; and

(9) Year means the taxable year of the taxpayer.

Source: Laws 1997, LB 886, § 2; Laws 1998, LB 1104, § 15; Laws 1999, LB 539, § 1; Laws 2003, LB 608, § 2; Laws 2005, LB 312, § 17; Laws 2006, LB 990, § 2; Laws 2006, LB 1003, § 8; Laws 2007, LB223, § 16; Laws 2007, LB368, § 136; Laws 2008, LB895, § 2; Laws 2015, LB175, § 6; Laws 2019, LB302, § 101.

Cross References

Environmental Protection Act, see section 81-1532.
Integrated Solid Waste Management Act, see section 13-2001.
Livestock Waste Management Act, see section 54-2416.
Nebraska Revenue Act of 1967, see section 77-2701.

77-27,187.02 Application; deadline; contents; fee; written agreement; contents.

(1) To earn the incentives set forth in the Nebraska Advantage Rural Development Act, the taxpayer shall file an application for an agreement with the Tax Commissioner. There shall be no new applications for incentives filed under this section after December 31, 2027.

(2) The application shall contain:

(a) A written statement describing the full expected employment or type of livestock production and the investment amount for a qualified business, as described in section 77-27,189, in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project; and

(c) An application fee of five hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund. The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment or investment.

(3)(a) The Tax Commissioner shall approve the application and authorize the total amount of credits expected to be earned as a result of the project if he or she is satisfied that the plan in the application defines a project that (i) meets the requirements established in section 77-27,188 and such requirements will be reached within the required time period and (ii) for projects other than livestock modernization or expansion projects, is located in an eligible county, city, or village.

(b) For applications filed in calendar year 2015, the Tax Commissioner shall not approve further applications once the expected credits from the approved projects total one million dollars. For applications filed in calendar year 2016 and each year thereafter, the Tax Commissioner shall not approve further applications from applicants described in subsection (1) of section 77-27,188 once the expected credits from approved projects from this category total one million dollars. For applications filed in calendar year 2016 and each year thereafter, the Tax Commissioner shall not approve further applications from applicants described in subsection (2) of section 77-27,188 once the expected credits from approved projects in this category total: For calendar year 2016, five hundred thousand dollars; for calendar years 2017 and 2018, seven hundred fifty thousand dollars; for calendar years 2019, 2020, and 2021, one million dollars; and for calendar year 2022 and each calendar year thereafter, ten million dollars. Four hundred dollars of the application fee shall be refunded to the applicant if the application is not approved because the expected credits from approved projects exceed such amounts.

(c) Applications for benefits shall be considered separately and in the order in which they are received for the categories represented by subsections (1) and (2) of section 77-27,188.

(d) Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November

1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Rural Development Act up to the total amount that were authorized by the Tax Commissioner at the time of approval. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required level must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) The maximum amount of credits authorized.

Source: Laws 2003, LB 608, § 3; Laws 2005, LB 312, § 18; Laws 2006, LB 990, § 3; Laws 2007, LB223, § 17; Laws 2008, LB895, § 3; Laws 2008, LB914, § 17; Laws 2009, LB164, § 2; Laws 2011, LB389, § 14; Laws 2015, LB175, § 7; Laws 2015, LB538, § 10; Laws 2016, LB1022, § 6; Laws 2022, LB1261, § 13.
Operative date April 20, 2022.

77-27,188 Tax credit; allowed; when; amount; repayment.

(1) A refundable credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who has an approved application pursuant to the Nebraska Advantage Rural Development Act, who is engaged in a qualified business as described in section 77-27,189, and who after January 1, 2006:

(a)(i) Increases employment by two new equivalent employees and makes an increased investment of at least one hundred twenty-five thousand dollars prior to the end of the first taxable year after the year in which the application was submitted in (A) any county in this state with a population of fewer than fifteen thousand inhabitants, according to the most recent federal decennial census, (B) any village in this state, or (C) any area within the corporate limits of a city of the metropolitan class consisting of one or more contiguous census tracts, as determined by the most recent federal decennial census, which contain a percentage of persons below the poverty line of greater than thirty percent, and all census tracts contiguous to such tract or tracts; or

(ii) Increases employment by five new equivalent employees and makes an increased investment of at least two hundred fifty thousand dollars prior to the end of the first taxable year after the year in which the application was submitted in any county in this state with a population of less than twenty-five thousand inhabitants, according to the most recent federal decennial census, or any city of the second class; and

(b) Pays a minimum qualifying wage of eight dollars and twenty-five cents per hour to the new equivalent employees for which tax credits are sought

under the Nebraska Advantage Rural Development Act. The Department of Revenue shall adjust the minimum qualifying wages required for applications filed after January 1, 2004, and each January 1 thereafter, as follows: The current rural Nebraska average weekly wage shall be divided by the rural Nebraska average weekly wage for 2003; and the result shall be multiplied by the eight dollars and twenty-five cents minimum qualifying wage for 2003 and rounded to the nearest one cent. The amount of increase or decrease in the minimum qualifying wages for any year shall be the cumulative change in the rural Nebraska average weekly wage since 2003. For purposes of this subsection, rural Nebraska average weekly wage means the most recent average weekly wage paid by all employers in all counties with a population of less than twenty-five thousand inhabitants as reported by October 1 by the Department of Labor.

For purposes of this section, a teleworker working in Nebraska from his or her residence for a taxpayer shall be considered an employee of the taxpayer, and property of the taxpayer provided to the teleworker working in Nebraska from his or her residence shall be considered an investment. Teleworker includes an individual working on a per-item basis and an independent contractor working for the taxpayer so long as the taxpayer withholds Nebraska income tax from wages or other payments made to such teleworker. For purposes of calculating the number of new equivalent employees when the teleworkers are paid on a per-item basis or are independent contractors, the total wages or payments made to all such new employees during the year shall be divided by the qualifying wage as determined in subdivision (b) of this subsection, with the result divided by two thousand eighty hours.

(2) A refundable credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who (a) has an approved application pursuant to the Nebraska Advantage Rural Development Act, (b) is engaged in livestock production, and (c) after January 1, 2007, invests at least fifty thousand dollars for livestock modernization or expansion.

(3) The amount of the credit allowed under subsection (1) of this section shall be three thousand dollars for each new equivalent employee and two thousand seven hundred fifty dollars for each fifty thousand dollars of increased investment. For applications filed before January 1, 2016, the amount of the credit allowed under subsection (2) of this section shall be ten percent of the investment, not to exceed a credit of thirty thousand dollars. For applications filed on or after January 1, 2016, and before April 20, 2022, the amount of the credit allowed under subsection (2) of this section shall be ten percent of the investment, not to exceed a credit of one hundred fifty thousand dollars per application. For applications filed on or after April 20, 2022, the amount of the credit allowed under subsection (2) of this section shall be ten percent of the investment, not to exceed a credit of five hundred thousand dollars per application. For each application, a taxpayer engaged in livestock production may qualify for a credit under either subsection (1) or (2) of this section, but cannot qualify for more than one credit per application.

(4) An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of this section if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

(5) The credit shall not exceed the amounts set out in the application and approved by the Tax Commissioner.

(6)(a) If a taxpayer who receives tax credits creates fewer jobs or less investment than required in the project agreement, the taxpayer shall repay the tax credits as provided in this subsection.

(b) If less than seventy-five percent of the required jobs in the project agreement are created, one hundred percent of the job creation tax credits shall be repaid. If seventy-five percent or more of the required jobs in the project agreement are created, no repayment of the job creation tax credits is necessary.

(c) If less than seventy-five percent of the required investment in the project agreement is created, one hundred percent of the investment tax credits shall be repaid. If seventy-five percent or more of the required investment in the project agreement is created, no repayment of the investment tax credits is necessary.

(7) For taxpayers who submitted applications for benefits under the Nebraska Advantage Rural Development Act before January 1, 2006, subsection (1) of this section, as such subsection existed immediately prior to such date, shall continue to apply to such taxpayers. The changes made by Laws 2005, LB 312, shall not preclude a taxpayer from receiving the tax incentives earned prior to January 1, 2006.

Source: Laws 1986, LB 1124, § 2; Laws 1987, LB 270, § 2; Laws 1989, LB 335, § 1; Laws 1993, LB 725, § 16; Laws 1995, LB 134, § 6; Laws 1997, LB 886, § 3; Laws 1999, LB 539, § 2; Laws 2001, LB 169, § 2; Laws 2003, LB 608, § 4; Laws 2005, LB 312, § 19; Laws 2006, LB 990, § 4; Laws 2007, LB223, § 18; Laws 2008, LB895, § 4; Laws 2015, LB175, § 8; Laws 2022, LB1261, § 14. Operative date April 20, 2022.

Cross References

Ethanol facility eligible for tax credit, requirements, see section 66-1349.
Nebraska Revenue Act of 1967, see section 77-2701.

77-27,195 Report; contents; joint hearing.

(1) The Tax Commissioner shall prepare a report identifying the amount of investment in this state and the number of equivalent jobs created by each taxpayer claiming a credit pursuant to the Nebraska Advantage Rural Development Act. The report shall include the amount of credits claimed in the aggregate. The report shall be issued on or before October 31 of each year for all credits allowed during the previous fiscal year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Revenue shall, on or before December 15 of each even-numbered year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) Beginning with applications filed on or after January 1, 2006, except for livestock modernization or expansion projects, the report shall provide information on project-specific total incentives used every two years for each approved project and shall disclose (a) the identity of the taxpayer, (b) the

location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the Department of Revenue, but not necessarily received, during the previous two fiscal years.

(3) For livestock modernization or expansion projects, the report shall disclose (a) the identity of the taxpayer, (b) the total credits used and refunds approved during the preceding fiscal year, and (c) the location of the project.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1986, LB 1124, § 9; Laws 1993, LB 725, § 19; Laws 1997, LB 886, § 9; Laws 2003, LB 608, § 11; Laws 2005, LB 312, § 22; Laws 2006, LB 990, § 7; Laws 2013, LB612, § 3; Laws 2022, LB1150, § 4.
Operative date April 20, 2022.

(q) COUNTY LICENSE OR OCCUPATION TAX ON ADMISSIONS

77-27,223 County; license or occupation tax; authorized; election.

A county may raise revenue by levying and collecting a license or occupation tax on any person, partnership, limited liability company, corporation, or business engaged in the sale of admissions to recreational, cultural, entertainment, or concert events that are subject to sales tax under sections 77-2701.04 to 77-2713 that occur outside any incorporated municipality, but within the boundary limits of the county. The tax shall be uniform in respect to the class upon which it is imposed. The tax shall be based upon a certain percentage of gross receipts from sales in the county of the person, partnership, limited liability company, corporation, or business, and may include sales of other goods and services at such locations and events, not to exceed one and one-half percent. A county may not impose the tax on sales that are within an incorporated city or village. No county shall levy and collect a license or occupation tax under this section unless approved by a majority of those voting on the question at a special, primary, or general election.

Source: Laws 2002, LB 259, § 1; Laws 2003, LB 282, § 83; Laws 2021, LB26, § 7; Laws 2021, LB595, § 11; Laws 2022, LB984, § 10.
Operative date October 1, 2022.

(t) BIODIESEL FACILITY INVESTMENT CREDIT

77-27,236 Biodiesel facility tax credit; conditions; facility; requirements; information not public record.

(1) A taxpayer who makes an investment after January 1, 2008, and prior to January 1, 2015, in a biodiesel facility shall receive a nonrefundable income tax credit as provided in this section.

(2) The credit provided in subsection (1) of this section shall be equal to thirty percent of the amount invested by the taxpayer in a biodiesel facility. The credit shall be taken over at least four taxable years subject to the following conditions:

(a) No more than ten percent of the credit provided for in subsection (1) of this section shall be taken in each of the first two taxable years the biodiesel facility produces B100 and no more than fifty percent of the credit provided for in subsection (1) of this section shall be taken in the third taxable year the biodiesel facility produces B100. The credit allowed under subsection (1) of this section shall not exceed fifty percent of the taxpayer's liability in any tax year;

(b) Any amount of credit not allowed because of the limitations in this section may be carried forward for up to fifteen taxable years after the taxable year in which the investment was made. The aggregate maximum income tax credit a taxpayer may obtain is two hundred fifty thousand dollars;

(c) The investment shall be at risk in the biodiesel facility. The investment shall be in the form of a purchase of an ownership interest or the right to receive payment of dividends from the biodiesel facility and shall remain in the business for at least three years. The Tax Commissioner may recapture any credits used if the investment does not remain invested for the three-year period. An investment placed in escrow does not qualify under this subdivision;

(d) The entire amount of the investment shall be expended by the biodiesel facility for plant, equipment, research and development, marketing and sales activity, or working capital;

(e) A partnership, a subchapter S corporation, a limited liability company that for tax purposes is treated like a partnership, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or any other pass-through entity that invests in a biodiesel facility shall be considered to be the taxpayer for purposes of the credit limitations. Except for the limitation under subdivision (2)(a) of this section, the amount of the credit allowed to a pass-through entity shall be determined at the partnership, corporate, cooperative, or other organizational level. The amount of the credit determined at the partnership, corporate, cooperative, or other organizational level shall be allowed to the partners, members, or other owners in proportion to their respective ownership interests in the pass-through entity;

(f) The credit shall be taken only if (i) the biodiesel facility produces B100, (ii) the biodiesel facility in which the investment was made produces at a rate of at least seventy percent of its rated capacity continuously for at least one week during the first taxable year the credit is taken and produces at a rate of at least seventy percent of its rated capacity over a six-month period during each of the next two taxable years the credit is taken, (iii) all processing takes place at the biodiesel facility in which the investment was made and which is located in Nebraska, and (iv) at least fifty-one percent of the ownership interest of the biodiesel facility is held by Nebraska resident individuals or Nebraska entities; and

(g) The biodiesel facility shall provide the Department of Revenue written evidence substantiating that the biodiesel facility has received the requisite authority from the Department of Environment and Energy and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The biodiesel facility shall annually provide an analysis to the Department of Revenue of samples of the product collected according to

procedures specified by the department. The analysis shall be prepared by an independent laboratory meeting standards of the International Organization for Standardization. Prior to collecting the samples, the biodiesel facility shall notify the department which may observe the sampling procedures utilized by the biodiesel facility to obtain the samples to be submitted for independent analysis.

(3) Any biodiesel facility for which credits are granted shall, whenever possible, employ workers who are residents of the State of Nebraska.

(4) Trade secrets, academic and scientific research work, and other proprietary or commercial information which may be filed with the Tax Commissioner shall not be considered to be public records as defined in section 84-712.01 if the release of such trade secrets, work, or information would give advantage to business competitors and serve no public purpose. Any person seeking release of the trade secrets, work, or information as a public record shall demonstrate to the satisfaction of the department that the release would not violate this section.

(5) For purposes of this section:

(a) Biodiesel facility means a plant or facility related to the processing, marketing, or distribution of biodiesel; and

(b) B100 means pure biodiesel containing mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated as B100, and meeting the American Society for Testing and Materials standard, ASTM D6751.

Source: Laws 2007, LB343, § 2; Laws 2019, LB302, § 102.

(w) ONLINE HOSTING PLATFORM

77-27,239 Online hosting platform; Tax Commissioner; agreement authorized; powers.

(1) For purposes of this section, online hosting platform means a marketplace connected by computer to one or more other computers or networks, as through a commercial electronic information service or the Internet, through which (a) a seller or hotel operator may rent or furnish any room or rooms, lodgings, or accommodations in a hotel, a motel, an inn, a tourist camp, a tourist cabin, or any other place, (b) such room or rooms, lodgings, or accommodations may be advertised or listed, and (c) a purchaser or occupant may arrange for the occupancy of such room or rooms, lodgings, or accommodations.

(2) The Tax Commissioner may enter into an agreement with an online hosting platform to permit the online hosting platform to collect and pay the applicable sales taxes imposed under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the Nebraska Visitors Development Act, and sections 13-318 to 13-326 and 13-2813 to 13-2816 on behalf of the seller or hotel operator otherwise required to collect such taxes for transactions consummated through the online hosting platform. Upon entering into such agreement with the online hosting platform, the Tax Commissioner shall waive the tax collection responsibility of a seller or hotel operator for transactions consummated through the online hosting platform for which the online hosting platform has assumed this responsibility. The online hosting platform shall give

written notice to each seller or hotel operator which is covered by the agreement between the online hosting platform and the Tax Commissioner.

(3) Upon entering into an agreement with the Tax Commissioner under this section, the online hosting platform shall report aggregate information on the tax return prescribed by the Tax Commissioner, including an aggregate of gross receipts, exemptions, adjustments, and taxable receipts of all transactions subject to the agreement.

Source: Laws 2019, LB57, § 4.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Visitors Development Act, see section 81-3701.

(x) CREDIT FOR EMPLOYING INDIVIDUAL CONVICTED OF FELONY

77-27,240 Individual convicted of a felony; employer; tax credit; application; Department of Revenue; powers and duties.

(1) For taxable years beginning or deemed to begin on or after January 1, 2023, under the Internal Revenue Code of 1986, as amended, an employer that employs an eligible employee during the taxable year shall be eligible to receive a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967.

(2) The credit provided in this section shall be an amount equal to ten percent of the wages paid by the employer to the eligible employee during the taxable year, except that:

(a) The credit shall only be allowed with respect to wages paid during the first twelve months of the eligible employee's employment with the employer; and

(b) The total credit taken pursuant to this section with respect to any one eligible employee shall not exceed twenty thousand dollars.

(3) An employer shall apply for the credit provided in this section by submitting an application to the Department of Revenue on a form prescribed by the department. The application shall include:

(a) The number of eligible employees employed by the employer during the taxable year;

(b) The amount of wages paid to each such eligible employee during the taxable year; and

(c) Any other information required by the department to verify the employer's eligibility for the credit.

(4) Subject to subsection (5) of this section, if the Department of Revenue determines that the employer qualifies for a tax credit under this section, the department shall approve the application and certify the amount of the approved credit to the employer.

(5) The Department of Revenue shall consider applications in the order in which they are received and may approve tax credits under this section each year until the total amount of approved credits reaches five million dollars.

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

(7) For purposes of this section, eligible employee means an individual who has been convicted of a felony in this or any other state.

Source: Laws 2022, LB917, § 2.
Effective date July 21, 2022.

ARTICLE 29

NEBRASKA JOB CREATION AND MAINSTREET REVITALIZATION ACT

Section
77-2906. Request for final approval; form; approval; when; department; duties; extension; denial; appeal; credit; issuance of certificates; fee; credit carried forward.

77-2906 Request for final approval; form; approval; when; department; duties; extension; denial; appeal; credit; issuance of certificates; fee; credit carried forward.

(1)(a) Within twelve months after the date on which the historically significant real property is placed in service, a person whose application was approved under section 77-2905 shall file a request for final approval containing all required information with the officer on a form prescribed by the officer and shall include a fee established by the officer pursuant to section 77-2907. The officer shall then determine whether the work substantially conforms to the application approved under section 77-2905. If the work substantially conforms and no other significant improvements have been made to the historically significant real property that do not substantially comply with the standards, the officer shall approve the request for final approval. The person whose request is approved shall then apply to the department to determine the amount of eligible expenditures, calculate the amount of the credit, and issue a certificate to the person evidencing the credit. If the work does not substantially conform to the approved application or if other significant improvements have been made to the historically significant real property that do not substantially comply with the standards, the officer shall deny the request for final approval and provide the person with a written explanation of the decision. The officer shall make a determination on the request for final approval in writing within thirty days after the filing of the request. If the officer does not make a determination within thirty days after the filing of the request, the request shall be deemed approved and the person may apply to the department to determine the amount of eligible expenditures, calculate the amount of the credit, and issue a certificate evidencing the credit.

(b) The department shall determine the amount of eligible expenditures, calculate the amount of the credit, and issue one or more certificates evidencing the credit within sixty days after receiving an application pursuant to subdivision (1)(a) of this section. The person filing the application and the department may also agree to extend the sixty-day period, but such extension shall not exceed an additional thirty days. If the department does not determine the amount of eligible expenditures, calculate the amount of the credit, and issue one or more certificates evidencing the credit within such sixty-day period or agreed-upon longer period, the credit shall be deemed to have been issued by the department for the amount requested in such person's application, except that such amount shall not exceed one hundred ten percent of the amount of credits allocated by the officer under section 77-2905 and such amount shall

not increase or decrease the total amount of credits that may be allocated by the officer under section 77-2905 in any calendar year.

(c) Any denial of a request for final approval by the officer or any determination of the amount of eligible expenditures or calculation of the amount of the credit by the department pursuant to this section may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) The department shall divide the credit and issue multiple certificates to a person who qualifies for the credit upon reasonable request.

(3) In calculating the amount of the credits to be issued pursuant to this section, the department may issue credits in an amount that differs from the amount of credits allocated by the officer under section 77-2905 if such credits are supported by eligible expenditures as determined by the department, except that the department shall not issue credits in an amount exceeding one hundred ten percent of the amount of credits allocated by the officer under section 77-2905. If the amount of credits to be issued under this section is more than the amount of credits allocated by the officer pursuant to section 77-2905, the department shall notify the officer of the difference and such amount shall be subtracted from the annual amount available for allocation under section 77-2905. If the amount of credits to be issued under this section is less than the amount of credits allocated by the officer pursuant to section 77-2905, the department shall notify the officer of the difference and such amount shall be added to the annual amount available for allocation under section 77-2905.

(4) The department shall not issue any certificates for credits under this section until the recipient of the credit has paid to the department:

(a) A fee equal to one-quarter of one percent of the credit amount. The department shall remit such fees to the State Treasurer for credit to the Civic and Community Center Financing Fund; and

(b) A fee equal to six-tenths of one percent of the credit amount. The department shall remit such fees to the State Treasurer for credit to the Department of Revenue Enforcement Fund.

(5) If the recipient of the credit is (a) a corporation having an election in effect under subchapter S of the Internal Revenue Code of 1986, as amended, (b) a partnership, or (c) a limited liability company, the credit may be claimed by the shareholders of the corporation, the partners of the partnership, or the members of the limited liability company in the same manner as those shareholders, partners, or members account for their proportionate shares of the income or losses of the corporation, partnership, or limited liability company, or as provided in the bylaws or other executed agreement of the corporation, partnership, or limited liability company. Credits granted to a partnership, a limited liability company taxed as a partnership, or other multiple owners of property shall be passed through to the partners, members, or owners, respectively, on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting any alternate distribution method.

(6) Subject to section 77-2912, any credit amount that is unused may be carried forward to subsequent tax years until fully utilized.

(7) Credits allowed under this section may be claimed for taxable years beginning or deemed to begin on or after January 1, 2015, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2014, LB191, § 6; Laws 2020, LB310, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 30
MECHANICAL AMUSEMENT DEVICE TAX ACT

Section
77-3001. Terms, defined.
77-3003.01. Seizure of mechanical amusement device; penalty; determination cash device complies with act; procedure; Tax Commissioner; powers and duties; mechanical amusement device decal; final decision; appeal; retail establishment; limits on devices; annual decal fee.
77-3003.02. Operation of cash device; restrictions.
77-3006. Tax Commissioner; administration of act.
77-3007. Tax; payment; decal; form; display.
77-3008. Municipalities; political subdivisions; power to tax.
77-3010. Violations; prosecution; limitation.
77-3011. Act, how cited.

77-3001 Terms, defined.

For purposes of the Mechanical Amusement Device Tax Act, unless the context otherwise requires:

(1) Cash device means any mechanical amusement device capable of awarding (a) cash, (b) anything redeemable for cash, (c) gift cards, credit, or other instruments which have a value denominated by reference to an amount of currency, or (d) anything redeemable for anything described in subdivision (c) of this subdivision;

(2) Department means the Department of Revenue;

(3) Distributor means any person who sells, leases, or delivers possession or custody of a machine or mechanical device to operators thereof for a consideration either directly or indirectly received;

(4) Mechanical amusement device means any machine which, upon insertion of a coin, currency, credit card, or substitute into the machine, operates or may be operated or used for a game, contest, or amusement of any description, such as, by way of example, but not by way of limitation, pinball games, shuffleboard, bowling games, radio-ray rifle games, baseball, football, racing, boxing games, electronic video games of skill, and coin-operated pool tables. Mechanical amusement device also includes game and draw lotteries and coin-operated automatic musical devices. Mechanical amusement device does not mean vending machines which dispense tangible personal property, devices located in private homes for private use, pickle card dispensing devices which are required to be registered with the department pursuant to section 9-345.03, gaming devices or limited gaming devices as defined in and operated pursuant to the Nebraska Racetrack Gaming Act, or devices which are mechanically constructed in a manner that would render their operation illegal under the laws of the State of Nebraska;

(5) Operator means any person who operates a place of business in which a machine or device owned by him or her is physically located or any person who places and who either directly or indirectly controls or manages any machine or device;

(6) Person means an individual, partnership, limited liability company, society, association, joint-stock company, corporation, estate, receiver, lessee, trus-

tee, assignee, referee, or other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals;

(7) Whenever in the act, the words machine or device are used, they refer to mechanical amusement device;

(8) Whenever in the act, the words electronic video games of skill, games of skill, or skill-based devices are used, they refer to mechanical amusement devices which produce an outcome predominantly caused by skill and not chance; and

(9) Whenever in the act, the words machine, device, person, operator, or distributor are used, the words in the singular include the plural and in the plural include the singular.

Source: Laws 1969, c. 635, § 1, p. 2541; Laws 1977, LB 353, § 1; Laws 1993, LB 121, § 514; Laws 1997, LB 317, § 1; Initiative Law 2020, No. 430, § 12; Laws 2021, LB1, § 1.

Cross References

Nebraska Racetrack Gaming Act, see section 9-1101.

77-3003.01 Seizure of mechanical amusement device; penalty; determination cash device complies with act; procedure; Tax Commissioner; powers and duties; mechanical amusement device decal; final decision; appeal; retail establishment; limits on devices; annual decal fee.

(1)(a) The Tax Commissioner or his or her agents or employees, at the direction of the Tax Commissioner, or any peace officer of this state may seize, without a warrant, any mechanical amusement device if there is cause to believe such device is not in compliance with the Mechanical Amusement Device Tax Act or any rules and regulations adopted and promulgated under the act or if the department determines the response to a request for information is materially deficient without good cause. In addition to seizure, any person placing in service or operating a cash device constituting a game of chance within this state shall be subject to a penalty of one thousand dollars for each day of such operation.

(b) For purposes of this subsection, a mechanical amusement device is subject to seizure and penalties as if it were a game of chance if:

(i) The mechanical amusement device is a cash device; and

(ii) The mechanical amusement device does not bear an unexpired decal as required under the Mechanical Amusement Device Tax Act.

(c) This section does not apply to any device (i) used in any bingo, lottery by the sale of pickle cards, or other lottery, raffle, or gift enterprise conducted in accordance with the Nebraska Bingo Act, Nebraska County and City Lottery Act, Nebraska Lottery and Raffle Act, Nebraska Pickle Card Lottery Act, Nebraska Small Lottery and Raffle Act, State Lottery Act, or section 9-701, (ii) used for a prize contest as defined in section 28-1101, or (iii) specifically authorized by the laws of this state.

(2) To receive a determination from the department that a cash device is in compliance with the Mechanical Amusement Device Tax Act and any rules and regulations adopted and promulgated under the act, a manufacturer or distributor of the device shall:

(a) Submit an application to the Tax Commissioner containing information regarding the device's location, software, Internet connectivity, and configuration as may be required by the Tax Commissioner;

(b) Submit an application fee of five hundred dollars;

(c) Provide a specimen of the proposed device;

(d) Provide all supporting evidence, including a report by an independent testing authority preapproved by the Tax Commissioner, to the Tax Commissioner indicating that, under all configurations, settings, and modes of operation, operation of the device constitutes a game of skill and not a game of chance and the use, operation, sale, or manufacture of the device would not constitute a violation of section 28-1107; and

(e) Provide an affidavit from the distributor affirming that no functional changes in hardware or software will be made to the approved device without further approval from the Tax Commissioner.

(3) The Tax Commissioner shall issue a response in writing to the applicant within forty-five days after the applicant has completed and submitted all application requirements. The Tax Commissioner's response shall state the reason for any denial or the reasons a determination cannot be made.

(4)(a) A device shall not be considered a game of skill if one or more of the following apply:

(i) The ability of any player to succeed at the game played on the device is impacted by the number or ratio of prior wins to prior losses of players playing such device;

(ii) The ability of the player to succeed at the game played on the device is impacted by the ability of any person to set a specified win-loss ratio for the device or by the device having a predetermined win-loss percentage;

(iii) The outcome of the game played on the device can be controlled by a source other than any player playing the device;

(iv) The success of any player is or may be determined by a chance event which cannot be altered by player action;

(v) There is no possibility for the player to win every game played on the device or there are unwinnable games or game modes on the device;

(vi) The ability of any player to succeed at the game played on the device requires the exercise of skill that no reasonable player could exercise; or

(vii) The primary determination of the prize amount is determined by the presentation or generation of a particular puzzle or group of symbols dealt to the player and the player does not have control over the puzzle or group of symbols presented.

(b) For purposes of this subsection, reasonable player means a player with an average level of intelligence, physical and mental skills, reaction time, and dexterity.

(5) The department or any court considering whether a gambling device is a game of skill may consider:

(a) The results of an analysis by any independent testing authority preapproved by the Tax Commissioner to evaluate the reaction time required for a player of a particular game on such device to perform the tasks required by the game to win; or

(b) The results of an analysis by any independent testing authority preapproved by the Tax Commissioner to evaluate factors set forth by the Tax Commissioner, other than reaction time, required for the player of a particular game on such device to perform the tasks required by the game to win.

(6) Factors which are not sufficient indications of a skill-based game include, but are not limited to:

(a) Whether a comprehensive list of prizes or outcomes is offered to the player or whether all outcomes are drawn from a finite pool of predetermined outcomes or starting positions;

(b) Whether a player can increase his or her chance of winning based on knowledge of probabilities in general or the probabilities of any particular prize or outcome in a game or on a device;

(c) Whether a player can simply choose not to play before committing money or credits; or

(d) A game task consisting solely of moving a symbol up or down, replacing one symbol with another, or any similar action, with or without a timer.

(7) Upon approval of an application based on a determination that the mechanical amusement device is a game of skill and not a game of chance, the Tax Commissioner shall issue a mechanical amusement device decal for the device as configured and as provided in subsection (8) of this section. No mechanical amusement device decal shall be issued for any cash device unless the department has determined that such device is a game of skill and not a game of chance and that the manufacture, sale, transport, placement, possession, or operation of such device does not constitute a violation of section 28-1107. If the Tax Commissioner does not approve the application for the device, the application shall be denied and the operator shall have the opportunity for an administrative hearing before the Tax Commissioner at which evidence may be presented on the issue of whether the device is specifically authorized by law and is not a gambling device as defined in section 28-1101. After such hearing, the Tax Commissioner shall enter a final decision approving or denying the application. The Tax Commissioner's final decision may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(8)(a) Upon approval of a specimen of a mechanical amusement device as a game of skill under this section, the department may issue a mechanical amusement device decal for each such device:

(i) If certified by the manufacturer to be functionally identical in both hardware and software configurations to the specimen provided to the department; and

(ii) If the application fee described in subdivision (2)(b) of this section and the annual decal fee described in subdivision (c) of this subsection have been paid.

(b) An owner or operator of a retail establishment shall operate no more than four cash devices, except that an establishment with over four thousand square feet may have one cash device for each one thousand square feet, up to a maximum of fifteen cash devices.

(c) The owner or operator of a cash device shall pay an annual decal fee of two hundred fifty dollars to the department for each device in operation in Nebraska. The decal issued under this section shall be distinct from other decals issued by the department for mechanical amusement devices that are not

required to be evaluated under this section. Regardless of the issuance of a decal by the department, no device shall be considered in compliance if it does not bear an unexpired decal in a conspicuous place.

(9) The application process described in this section shall not be construed to limit further investigation by the department or the issuance of further regulations to promote compliance after the application process is completed. At any point after a determination of skill by the department, the department may request from the manufacturer, distributor, or operator information about any device in operation in this state, including, but not limited to, information regarding currently operable source code, changes to software or hardware, and communications from or to the device over the Internet. A manufacturer, distributor, or operator that receives a request shall respond with all responsive information in its possession or control within fifteen business days.

(10)(a) Before any rules and regulations adopted and promulgated to carry out this section become effective, any manufacturer, distributor, or owner may continue to manufacture, sell, transport, place, possess, or enter into a transaction involving (i) cash devices already in operation at an establishment as of May 1, 2019, or (ii) other cash devices that are functionally identical to those already in operation at an establishment as of May 1, 2019.

(b) After any rules and regulations adopted and promulgated to carry out this section become effective, until any determination of compliance or noncompliance by the department, any manufacturer, distributor, or owner may continue to manufacture, sell, transport, place, possess, or enter into a transaction involving cash devices described in subdivision (10)(a) of this section if, within ninety days after the date when any such rules and regulations become effective, the manufacturer or distributor files an application with the department for such a determination.

(c) If a manufacturer or distributor receives a determination from the department that a device described in subdivision (10)(a) of this section is not in compliance with the Mechanical Amusement Device Tax Act, such manufacturer or distributor shall have thirty days after the issuance of that determination to remove any such device from operation in Nebraska.

(11) Application fees collected under subsection (2) of this section and annual decal fees collected under subsection (8) of this section shall be remitted to the State Treasurer for credit to the Department of Revenue Enforcement Fund.

Source: Laws 2019, LB538, § 3.

Cross References

Administrative Procedure Act, see section 84-920.
Nebraska Bingo Act, see section 9-201.
Nebraska County and City Lottery Act, see section 9-601.
Nebraska Lottery and Raffle Act, see section 9-401.
Nebraska Pickle Card Lottery Act, see section 9-301.
Nebraska Small Lottery and Raffle Act, see section 9-501.
State Lottery Act, see section 9-801.

77-3003.02 Operation of cash device; restrictions.

No cash device shall be operated using a credit card, charge card, or debit card. No person under nineteen years of age shall play or participate in any way in the operation of a cash device. No operator or employee or agent of any

operator shall knowingly permit any individual under nineteen years of age to play or participate in any way in the operation of a cash device.

Source: Laws 2019, LB538, § 4.

77-3006 Tax Commissioner; administration of act.

The administration of the Mechanical Amusement Device Tax Act is hereby vested in the Tax Commissioner subject to other provisions of law relating to the Tax Commissioner. The Tax Commissioner may prescribe, adopt and promulgate, and enforce rules and regulations relating to the administration and enforcement of the act and may delegate authority to his or her representatives to conduct hearings or perform any other duties imposed under the act. The Tax Commissioner may adopt and promulgate rules and regulations necessary to carry out section 77-3003.01.

Source: Laws 1969, c. 635, § 6, p. 2544; Laws 2019, LB538, § 5.

77-3007 Tax; payment; decal; form; display.

(1) The payment of the tax imposed by the Mechanical Amusement Device Tax Act shall be evidenced by a separate decal for each device signifying payment of the tax, in a form prescribed by the Tax Commissioner.

(2) Every operator shall place such decal in a conspicuous place on each device to denote payment of the tax for each device for the current year.

Source: Laws 1969, c. 635, § 7, p. 2544; Laws 1977, LB 353, § 3; Laws 2019, LB538, § 6.

77-3008 Municipalities; political subdivisions; power to tax.

Nothing in the Mechanical Amusement Device Tax Act shall be construed to limit, usurp, or repeal any power to tax granted to the political subdivisions and municipalities of the State of Nebraska by the laws and Constitution of Nebraska.

Source: Laws 1969, c. 635, § 8, p. 2545; Laws 2019, LB538, § 7.

77-3010 Violations; prosecution; limitation.

Prosecutions for any violations of the Mechanical Amusement Device Tax Act shall be brought by the Attorney General or county attorney in the county in which the violation occurs. Any prosecution for the violation of any of the provisions of the act shall be instituted within three years after the commission of the offense.

Source: Laws 1969, c. 635, § 10, p. 2545; Laws 2019, LB538, § 8.

77-3011 Act, how cited.

Sections 77-3001 to 77-3011 shall be known and may be cited as the Mechanical Amusement Device Tax Act.

Source: Laws 1969, c. 635, § 11, p. 2545; Laws 2019, LB538, § 9.

ARTICLE 31

VOLUNTEER EMERGENCY RESPONDERS INCENTIVE ACT

Section
77-3104. Certification administrator; designation; duties; notice to volunteer member; written certification.

Section
77-3105. Certification administrator; certified list of volunteer members; duties; income tax credit.

77-3104 Certification administrator; designation; duties; notice to volunteer member; written certification.

(1) Each volunteer department serving a county, city, village, or rural or suburban fire protection district shall designate one member of the department to serve as the certification administrator. The designation of such individual as the certification administrator shall be confirmed and approved by the governing body of such county, city, village, or rural or suburban fire protection district. The certification administrator shall keep and maintain records on the activities of all volunteer members and award points for such activities based upon the standard criteria for qualified active service.

(2) No later than July 15 of each year, the certification administrator shall provide each volunteer member with notice of the total points he or she has accumulated during the first six months of the current calendar year of service.

(3) No later than February 1 of each year, the certification administrator shall provide each volunteer member with a written certification stating the total number of points accumulated by the volunteer member during the immediately preceding calendar year of service and whether the volunteer member has qualified as an active emergency responder, active rescue squad member, or active volunteer firefighter for such year. Such certification may be sent electronically or by mail.

Source: Laws 2016, LB886, § 4; Laws 2018, LB760, § 4; Laws 2019, LB222, § 1.

77-3105 Certification administrator; certified list of volunteer members; duties; income tax credit.

(1) The certification administrator of the volunteer department shall file with the Department of Revenue a certified list of those volunteer members who have qualified as active emergency responders, active rescue squad members, or active volunteer firefighters for the immediately preceding calendar year of service no later than February 15. The certification administrator shall also send a copy of such certified list to the governing body of the county, city, village, or rural or suburban fire protection district. Such copy may be sent electronically or by mail.

(2) Each volunteer member on the list described in subsection (1) of this section shall receive a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 in an amount equal to two hundred fifty dollars beginning with the second taxable year in which such volunteer member is included on such list. The volunteer member shall claim the credit by including a copy of the certification received under subsection (3) of section 77-3104 with the volunteer member's state income tax return.

Source: Laws 2016, LB886, § 5; Laws 2018, LB760, § 5; Laws 2019, LB222, § 2.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 34
POLITICAL SUBDIVISIONS, BUDGET LIMITATIONS

(d) LIMITATION ON PROPERTY TAXES

(e) BASE LIMITATION

(d) LIMITATION ON PROPERTY TAXES

77-3442 Property tax levies; maximum levy; exceptions.

(1) Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section except as provided in section 77-3444.

(2)(a) Except as provided in subdivisions (2)(b) and (2)(e) of this section, school districts and multiple-district school systems may levy a maximum levy of one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) For each fiscal year prior to fiscal year 2017-18, learning communities may levy a maximum levy for the general fund budgets of member school districts of ninety-five cents per one hundred dollars of taxable valuation of property subject to the levy. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.

(c) Except as provided in subdivision (2)(e) of this section, for each fiscal year prior to fiscal year 2017-18, school districts that are members of learning communities may levy for purposes of such districts' general fund budget and special building funds a maximum combined levy of the difference of one dollar and five cents on each one hundred dollars of taxable property subject to the levy minus the learning community levy pursuant to subdivision (2)(b) of this section for such learning community.

(d) Excluded from the limitations in subdivisions (2)(a) and (2)(c) of this section are (i) amounts levied to pay for current and future sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment occurring prior to September 1, 2017, (ii) amounts levied by a school district otherwise at the maximum levy pursuant to subdivision (2)(a) of this section to pay for current and future qualified voluntary termination incentives for certificated teachers pursuant to subsection (3) of section 79-8,142 that are not otherwise included in an exclusion pursuant to subdivision (2)(d) of this section, (iii) amounts levied by a school district otherwise at the maximum levy pursuant to subdivision (2)(a) of this section to pay for seventy-five percent of the current and future sums agreed to be paid to certificated employees in exchange for a voluntary termination of employment occurring between September 1, 2017, and August 31, 2018, as a result of a collective-bargaining agreement in force and effect on September 1, 2017, that are not otherwise included in an exclusion pursuant to subdivision (2)(d) of this section, (iv) amounts levied by a school district otherwise at the maximum levy pursuant to subdivision (2)(a) of this section to pay for fifty percent of the

current and future sums agreed to be paid to certificated employees in exchange for a voluntary termination of employment occurring between September 1, 2018, and August 31, 2019, as a result of a collective-bargaining agreement in force and effect on September 1, 2017, that are not otherwise included in an exclusion pursuant to subdivision (2)(d) of this section, (v) amounts levied by a school district otherwise at the maximum levy pursuant to subdivision (2)(a) of this section to pay for twenty-five percent of the current and future sums agreed to be paid to certificated employees in exchange for a voluntary termination of employment occurring between September 1, 2019, and August 31, 2020, as a result of a collective-bargaining agreement in force and effect on September 1, 2017, that are not otherwise included in an exclusion pursuant to subdivision (2)(d) of this section, (vi) amounts levied in compliance with sections 79-10,110 and 79-10,110.02, and (vii) amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project.

(e) Federal aid school districts may exceed the maximum levy prescribed by subdivision (2)(a) or (2)(c) of this section only to the extent necessary to qualify to receive federal aid pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. For purposes of this subdivision, federal aid school district means any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001.

(f) For each fiscal year, learning communities may levy a maximum levy of one-half cent on each one hundred dollars of taxable property subject to the levy for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to fifty percent of the estimated cost for focus school or program capital projects approved by the learning community coordinating council pursuant to section 79-2111.

(g) For each fiscal year, learning communities may levy a maximum levy of one and one-half cents on each one hundred dollars of taxable property subject to the levy for early childhood education programs for children in poverty, for elementary learning center employees, for contracts with other entities or individuals who are not employees of the learning community for elementary learning center programs and services, and for pilot projects, except that no more than ten percent of such levy may be used for elementary learning center employees.

(3) For each fiscal year, community college areas may levy the levies provided in subdivisions (2)(a) through (c) of section 85-1517, in accordance with the provisions of such subdivisions. A community college area may exceed the levy provided in subdivision (2)(b) of section 85-1517 by the amount necessary to retire general obligation bonds assumed by the community college area or issued pursuant to section 85-1515 according to the terms of such bonds or for any obligation pursuant to section 85-1535 entered into prior to January 1, 1997.

(4)(a) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) Natural resources districts shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition, natural resources districts located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2017-18.

(5) Any educational service unit authorized to levy a property tax pursuant to section 79-1225 may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(6)(a) Incorporated cities and villages which are not within the boundaries of a municipal county may levy a maximum levy of forty-five cents per one hundred dollars of taxable valuation of property subject to the levy plus an additional five cents per one hundred dollars of taxable valuation to provide financing for the municipality's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201, museum pursuant to section 51-501, visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or statue, memorial, or monument pursuant to section 80-202.

(b) Incorporated cities and villages which are within the boundaries of a municipal county may levy a maximum levy of ninety cents per one hundred dollars of taxable valuation of property subject to the levy. The maximum levy shall include amounts paid to a municipal county for county services, amounts levied to pay for sums to support a library pursuant to section 51-201, a museum pursuant to section 51-501, a visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts

which have been in existence for more than five years and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated.

(9) Municipal counties may levy or authorize a maximum levy of one dollar per one hundred dollars of taxable valuation of property subject to the levy. The municipal county may allocate levy authority to any political subdivision or entity subject to allocation under section 77-3443.

(10) Beginning July 1, 2016, rural and suburban fire protection districts may levy a maximum levy of ten and one-half cents per one hundred dollars of taxable valuation of property subject to the levy if (a) such district is located in a county that had a levy pursuant to subsection (8) of this section in the previous year of at least forty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) such district had a levy request pursuant to section 77-3443 in any of the three previous years and the county board of the county in which the greatest portion of the valuation of such district is located did not authorize any levy authority to such district in such year.

(11) A regional metropolitan transit authority may levy a maximum levy of ten cents per one hundred dollars of taxable valuation of property subject to the levy for each fiscal year that commences on the January 1 that follows the effective date of the conversion of the transit authority established under the Transit Authority Law into the regional metropolitan transit authority.

(12) Property tax levies (a) for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a political subdivision, (b) for preexisting lease-purchase contracts approved prior to July 1, 1998, (c) for bonds as defined in section 10-134 approved according to law

and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by educational service units and school districts, (d) for payments by a public airport to retire interest-free loans from the Division of Aeronautics of the Department of Transportation in lieu of bonded indebtedness at a lower cost to the public airport, and (e) to pay for cancer benefits provided on or after January 1, 2022, pursuant to the Firefighter Cancer Benefits Act are not included in the levy limits established by this section.

(13) The limitations on tax levies provided in this section are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this section are those provided by or authorized by sections 77-3442 to 77-3444.

(14) Tax levies in excess of the limitations in this section shall be considered unauthorized levies under section 77-1606 unless approved under section 77-3444.

(15) For purposes of sections 77-3442 to 77-3444, political subdivision means a political subdivision of this state and a county agricultural society.

(16) For school districts that file a binding resolution on or before May 9, 2008, with the county assessors, county clerks, and county treasurers for all counties in which the school district has territory pursuant to subsection (7) of section 79-458, if the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, are in excess of the greater of (a) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) the maximum levy authorized by a vote pursuant to section 77-3444, all school district levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, shall be considered unauthorized levies under section 77-1606.

Source: Laws 1996, LB 1114, § 1; Laws 1997, LB 269, § 56; Laws 1998, LB 306, § 36; Laws 1998, LB 1104, § 17; Laws 1999, LB 87, § 87; Laws 1999, LB 141, § 11; Laws 1999, LB 437, § 26; Laws 2001, LB 142, § 57; Laws 2002, LB 568, § 9; Laws 2002, LB 898, § 1; Laws 2002, LB 1085, § 19; Laws 2003, LB 540, § 2; Laws 2004, LB 962, § 110; Laws 2004, LB 1093, § 1; Laws 2005, LB 38, § 2; Laws 2006, LB 968, § 12; Laws 2006, LB 1024, § 14; Laws 2006, LB 1226, § 30; Laws 2007, LB342, § 31; Laws 2007, LB641, § 4; Laws 2007, LB701, § 33; Laws 2008, LB988, § 2; Laws 2008, LB1154, § 5; Laws 2009, LB121, § 11; Laws 2010, LB1070, § 4; Laws 2010, LB1072, § 3; Laws 2011, LB59, § 2; Laws 2011, LB400, § 2; Laws 2012, LB946, § 10; Laws 2012, LB1104, § 1; Laws 2013, LB585, § 1; Laws 2015, LB261, § 13; Laws 2015, LB325, § 7; Laws 2016, LB959, § 1; Laws 2016, LB1067, § 10; Laws 2017, LB339, § 269; Laws 2017, LB512, § 6; Laws 2019, LB63, § 6; Laws 2019, LB492, § 42; Laws 2021, LB432, § 14.

Cross References

Firefighter Cancer Benefits Act, see section 35-1002.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

Nebraska Ground Water Management and Protection Act, see section 46-701.
Transit Authority Law, see section 14-1826.

77-3443 Other political subdivisions; levy limit; levy request; governing body; duties; allocation of levy.

(1) All political subdivisions, other than (a) school districts, community colleges, natural resources districts, educational service units, cities, villages, counties, municipal counties, rural and suburban fire protection districts that have levy authority pursuant to subsection (10) of section 77-3442, and sanitary and improvement districts and (b) political subdivisions subject to municipal allocation under subsection (2) of this section, may levy taxes as authorized by law which are authorized by the county board of the county or the council of a municipal county in which the greatest portion of the valuation is located, which are counted in the county or municipal county levy limit provided in section 77-3442, and which do not collectively total more than fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property for all governments for which allocations are made by the municipality, county, or municipal county, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Division of Aeronautics of the Department of Transportation in lieu of bonded indebtedness at a lower cost to the public airport. The county board or council shall review and approve or disapprove the levy request of all political subdivisions subject to this subsection. The county board or council may approve all or a portion of the levy request and may approve a levy request that would allow the requesting political subdivision to levy a tax at a levy greater than that permitted by law. Unless a transit authority elects to convert to a regional metropolitan transit authority in accordance with the Regional Metropolitan Transit Authority Act, and for each fiscal year of such a transit authority until the first fiscal year commencing after the effective date of such conversion, the county board of a county or the council of a municipal county which contains a transit authority established pursuant to the Transit Authority Law shall allocate no less than three cents per one hundred dollars of taxable property within the city or municipal county subject to the levy to the transit authority if requested by such authority. For any political subdivision subject to this subsection that receives taxes from more than one county or municipal county, the levy shall be allocated only by the county or municipal county in which the greatest portion of the valuation is located. The county board of equalization shall certify all levies by October 20 to insure that the taxes levied by political subdivisions subject to this subsection do not exceed the allowable limit for any parcel or item of taxable property. The levy allocated by the county or municipal county may be exceeded as provided in section 77-3444.

(2) All city airport authorities established under the Cities Airport Authorities Act, community redevelopment authorities established under the Community Development Law, transit authorities established under the Transit Authority Law unless and until the first fiscal year commencing after the effective date of any conversion by such a transit authority into a regional metropolitan transit authority pursuant to the Regional Metropolitan Transit Authority Act, and offstreet parking districts established under the Offstreet Parking District Act may be allocated property taxes as authorized by law which are authorized by the city, village, or municipal county and are counted in the city or village levy

limit or municipal county levy limit provided by section 77-3442, except that such limitation shall not apply to property tax levies for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Division of Aeronautics of the Department of Transportation in lieu of bonded indebtedness at a lower cost to the public airport. For offstreet parking districts established under the Offstreet Parking District Act, the tax shall be counted in the allocation by the city proportionately, by dividing the total taxable valuation of the taxable property within the district by the total taxable valuation of the taxable property within the city multiplied by the levy of the district. Unless a transit authority elects to convert into a regional metropolitan transit authority pursuant to the Regional Metropolitan Transit Authority Act, and for each fiscal year of such a transit authority until the first fiscal year commencing after the effective date of such conversion, the city council of a city which has established a transit authority pursuant to the Transit Authority Law or the council of a municipal county which contains a transit authority shall allocate no less than three cents per one hundred dollars of taxable property subject to the levy to the transit authority if requested by such authority. The city council, village board, or council shall review and approve or disapprove the levy request of the political subdivisions subject to this subsection. The city council, village board, or council may approve all or a portion of the levy request and may approve a levy request that would allow a levy greater than that permitted by law. The levy allocated by the municipality or municipal county may be exceeded as provided in section 77-3444.

(3) On or before August 1, all political subdivisions subject to county, municipal, or municipal county levy authority under this section shall submit a preliminary request for levy allocation to the county board, city council, village board, or council that is responsible for levying such taxes. The preliminary request of the political subdivision shall be in the form of a resolution adopted by a majority vote of members present of the political subdivision's governing body. The failure of a political subdivision to make a preliminary request shall preclude such political subdivision from using procedures set forth in section 77-3444 to exceed the final levy allocation as determined in subsection (4) of this section.

(4) Each county board, city council, village board, or council shall (a) adopt a resolution by a majority vote of members present which determines a final allocation of levy authority to its political subdivisions and (b) forward a copy of such resolution to the chairperson of the governing body of each of its political subdivisions. No final levy allocation shall be changed after September 1 except by agreement between both the county board, city council, village board, or council which determined the amount of the final levy allocation and the governing body of the political subdivision whose final levy allocation is at issue.

Source: Laws 1996, LB 1114, § 2; Laws 1997, LB 269, § 57; Laws 1998, LB 306, § 37; Laws 1999, LB 141, § 12; Laws 2001, LB 142, § 58; Laws 2002, LB 994, § 26; Laws 2015, LB325, § 8; Laws 2017, LB339, § 270; Laws 2019, LB492, § 43; Laws 2021, LB644, § 22.

Cross References

Cities Airport Authorities Act, see section 3-514.
Community Development Law, see section 18-2101.
Offstreet Parking District Act, see section 19-3301.
Regional Metropolitan Transit Authority Act, see section 18-801.
Transit Authority Law, see section 14-1826.

77-3444 Authority to exceed maximum levy; procedure.

(1) A political subdivision may exceed the limits provided in section 77-3442 or a final levy allocation determination as provided in section 77-3443 by an amount not to exceed a maximum levy approved by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to exceed the limits provided in section 77-3442 or a final levy allocation as provided in section 77-3443 must be approved prior to October 10 of the fiscal year which is to be the first to exceed the limits or final levy allocation. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for exceeding the limits or final levy allocation by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount of levy which would be imposed in excess of the limits provided in section 77-3442 or the final levy allocation as provided in section 77-3443 and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than five years. Any resolution or petition calling for a special election shall be filed with the county clerk or election commissioner on or before the fifth Friday prior to the election, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty-one days after receipt of the resolution or petition. The election shall be held pursuant to the Election Act. For petitions filed with the county clerk or election commissioner on or after May 1, 1998, the petition shall be in the form as provided in sections 32-628 to 32-631. Any excess levy authority approved under this section shall terminate pursuant to its terms, on a vote of the governing body of the political subdivision to terminate the authority to levy more than the limits, at the end of the fourth fiscal year following the first year in which the levy exceeded the limit or the final levy allocation, or as provided in subsection (4) of this section, whichever is earliest. A governing body may pass no more than one resolution calling for an election pursuant to this section during any one calendar year. Only one election may be held in any one calendar year pursuant to a petition initiated under this section.

(2) The ballot question may include any terms and conditions set forth in the resolution or petition and shall include the following: ''Shall (name of political subdivision) be allowed to levy a property tax not to exceed . . . . . cents per one hundred dollars of taxable valuation in excess of the limits prescribed by law until fiscal year . . . . . for the purposes of (general operations; building construction, remodeling, or site acquisition; or both general operations and building construction, remodeling, or site acquisition)?''. If a majority

of the votes cast upon the ballot question are in favor of such tax, the county board shall authorize a tax in excess of the limits in section 77-3442 or the final levy allocation in section 77-3443 but such tax shall not exceed the amount stated in the ballot question. If a majority of those voting on the ballot question are opposed to such tax, the governing body of the political subdivision shall not impose such tax.

(3) In lieu of the election procedures in subsection (1) of this section, any political subdivision subject to section 77-3443 and villages may approve a levy in excess of the limits in section 77-3442 or the final levy allocation provided in section 77-3443 for a period of one year at a meeting of the residents of the political subdivision or village, called after notice is published in a newspaper of general circulation in the political subdivision or village at least twenty days prior to the meeting. At least ten percent of the registered voters residing in the political subdivision or village shall constitute a quorum for purposes of taking action to exceed the limits or final levy allocation. A record shall be made of the registered voters residing in the political subdivision or village who are present at the meeting. The method of voting at the meeting shall protect the secrecy of the ballot. If a majority of the registered voters present at the meeting vote in favor of exceeding the limits or final levy allocation, a copy of the record of that action shall be forwarded to the county board prior to October 10 and the county board shall authorize a levy as approved by the residents for the year. If a majority of the registered voters present at the meeting vote against exceeding the limits or final allocation, the limit or allocation shall not be exceeded and the political subdivision shall have no power to call for an election under subsection (1) of this section.

(4) A political subdivision may rescind or modify a previously approved excess levy authority prior to its expiration by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to rescind or modify must be approved prior to October 10 of the fiscal year for which it is to be effective. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for the rescission or modification by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount and the duration of the previously approved excess levy authority and a statement that either such excess levy authority will be rescinded or such excess levy authority will be modified. If the excess levy authority will be modified, the amount and duration of such modification shall be stated. The modification shall not have a duration greater than five years. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty-one days after receipt of the resolution or petition, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The election shall be held pursuant to the Election Act.

(5) For purposes of this section, when the political subdivision is a sanitary and improvement district, registered voter means a person qualified to vote as

provided in section 31-735. Any election conducted under this section for a sanitary and improvement district shall be conducted and counted as provided in sections 31-735 to 31-735.06.

(6) For purposes of this section, when the political subdivision is a school district or a multiple-district school system, registered voter includes persons qualified to vote for the members of the school board of the school district which is voting to exceed the maximum levy limits pursuant to this section.

Source: Laws 1996, LB 1114, § 3; Laws 1997, LB 269, § 58; Laws 1997, LB 343, § 1; Laws 1997, LB 806, § 4; Laws 1998, LB 306, § 38; Laws 1998, LB 1104, § 18; Laws 1999, LB 141, § 13; Laws 2007, LB289, § 1; Laws 2018, LB377, § 8; Laws 2022, LB843, § 55. Effective date July 21, 2022.

Cross References

Election Act, see section 32-101.

(e) BASE LIMITATION

77-3446 Base limitation, defined.

Base limitation means the budget limitation rate applicable to school districts and the limitation on growth of restricted funds applicable to other political subdivisions prior to any increases in the rate as a result of special actions taken by a supermajority of any governing board or of any exception allowed by law. The base limitation is two and one-half percent until adjusted, except that the base limitation for school districts for school fiscal years 2017-18 and 2018-19 is one and one-half percent and for school fiscal year 2019-20 is two percent. The base limitation may be adjusted annually by the Legislature to reflect changes in the prices of services and products used by school districts and political subdivisions.

Source: Laws 1998, LB 989, § 15; Laws 2001, LB 365, § 1; Laws 2003, LB 540, § 3; Laws 2009, LB545, § 2; Laws 2009, First Spec. Sess., LB5, § 1; Laws 2011, LB235, § 1; Laws 2013, LB407, § 1; Laws 2017, LB409, § 1; Laws 2019, LB675, § 1.

ARTICLE 35

HOMESTEAD EXEMPTION

Section
77-3506. Certain veterans; exemption; unremarried surviving spouse; application.
77-3508. Homesteads; assessment; exemptions; individuals; based on disability and income.
77-3512. Homestead; exemption; application; when filed.
77-3514.01. Homestead; exemption; late application because of medical condition or death of spouse; filing; form; county assessor; powers and duties; rejection; notice; hearing.
77-3517. Homestead; application for exemption; county assessor; Tax Commissioner; duties; refunds; liens; interest.
77-3519. Homestead; exemption; county assessor; rejection; applicant; complaint; contents; hearing; appeal.
77-3523. Homestead; exemption; county treasurer and county assessor; certify tax revenue lost within county; reimbursed; manner; distribution.

77-3506 Certain veterans; exemption; unremarried surviving spouse; application.

(1) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subsection (2) of this section, one hundred percent of the exempt amount.

(2) The exemption described in subsection (1) of this section shall apply to homesteads of:

(a) A veteran who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), who is drawing compensation from the United States Department of Veterans Affairs because of one hundred percent service-connected disability, and who is not eligible for total exemption under sections 77-3526 to 77-3528, an unremarried surviving spouse of such a veteran, or a surviving spouse of such a veteran who remarries after attaining the age of fifty-seven years;

(b) An unremarried surviving spouse of any veteran, including a veteran other than a veteran described in section 80-401.01, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who died because of a service-connected disability or a surviving spouse of such a veteran who remarries after attaining the age of fifty-seven years;

(c) An unremarried surviving spouse of a serviceman or servicewoman, including a veteran other than a veteran described in section 80-401.01, whose death while on active duty was service-connected or a surviving spouse of such a serviceman or servicewoman who remarries after attaining the age of fifty-seven years; and

(d) An unremarried surviving spouse of a serviceman or servicewoman who died while on active duty during the periods described in section 80-401.01 or a surviving spouse of such a serviceman or servicewoman who remarries after attaining the age of fifty-seven years.

(3) Application for exemption under this section shall include certification of the status set forth in subsection (2) of this section from the United States Department of Veterans Affairs. Such certification shall not be required in succeeding years if no change in status has occurred, except that the county assessor or the Tax Commissioner may request such certification to verify that no change in status has occurred.

Source: Laws 2014, LB1087, § 5; Laws 2016, LB683, § 1; Laws 2018, LB1089, § 6; Laws 2019, LB512, § 25.

77-3508 Homesteads; assessment; exemptions; individuals; based on disability and income.

(1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03. The exemption shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section.

(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of:

(i) Veterans as defined in section 80-401.01 who were discharged or otherwise separated with a characterization of honorable or general (under honor-

able conditions) and who are totally disabled by a non-service-connected accident or illness;

(ii) Individuals who have a permanent physical disability and have lost all mobility so as to preclude locomotion without the use of a mechanical aid or a prosthetic device as defined in section 77-2704.09;

(iii) Individuals who have undergone amputation of both arms above the elbow or who have a permanent partial disability of both arms in excess of seventy-five percent; and

(iv) Beginning January 1, 2015, individuals who have a developmental disability as defined in section 83-1205.

(c) Application for the exemption described in subdivision (a) of this subsection shall include certification from a qualified medical physician, physician assistant, or advanced practice registered nurse for subdivisions (b)(i) through (b)(iii) of this subsection, certification from the United States Department of Veterans Affairs affirming that the homeowner is totally disabled due to non-service-connected accident or illness for subdivision (b)(i) of this subsection, or certification from the Department of Health and Human Services for subdivision (b)(iv) of this subsection. Such certification from a qualified medical physician, physician assistant, or advanced practice registered nurse or from the Department of Health and Human Services shall be made on forms prescribed by the Department of Revenue. If an individual described in subdivision (b)(i), (ii), (iii), or (iv) of this subsection is granted a homestead exemption pursuant to this section for any year, such individual shall not be required to submit the certification required under this subdivision in succeeding years if no change in medical condition has occurred, except that the county assessor or the Tax Commissioner may request such certification to verify that no change in medical condition has occurred.

(2) For 2014, for a married or closely related claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 34,700	100
34,701 through 36,400	90
36,401 through 38,100	80
38,101 through 39,800	70
39,801 through 41,500	60
41,501 through 43,200	50
43,201 through 44,900	40
44,901 through 46,600	30
46,601 through 48,300	20
48,301 through 50,000	10
50,001 and over	0

(3) For 2014, for a single claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 30,300	100
30,301 through 31,700	90
31,701 through 33,100	80
33,101 through 34,500	70
34,501 through 35,900	60
35,901 through 37,300	50
37,301 through 38,700	40
38,701 through 40,100	30
40,101 through 41,500	20
41,501 through 42,900	10
42,901 and over	0

(4) For exemption applications filed in calendar years 2015 through 2017, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code of 1986, as it existed prior to December 22, 2017. For exemption applications filed in calendar year 2018 and each calendar year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted by the percentage change in the Consumer Price Index for All Urban Consumers published by the federal Bureau of Labor Statistics from the twelve months ending on August 31, 2016, to the twelve months ending on August 31 of the year preceding the applicable calendar year. The income eligibility amounts shall be adjusted for cumulative inflation since 2014. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 8; Laws 1980, LB 647, § 5; Laws 1981, LB 478, § 1; Laws 1983, LB 195, § 2; Laws 1986, LB 1258, § 2; Laws 1987, LB 376A, § 5; Laws 1988, LB 1105, § 3; Laws 1991, LB 2, § 17; Laws 1994, LB 902, § 34; Laws 1995, LB 483, § 5; Laws 1997, LB 182, § 5; Laws 1999, LB 179, § 2; Laws 2000, LB 1279, § 2; Laws 2005, LB 17, § 1; Laws 2005, LB 54, § 17; Laws 2014, LB986, § 2; Laws 2016, LB776, § 6; Laws 2017, LB20, § 1; Laws 2018, LB1089, § 10; Laws 2019, LB512, § 26.

77-3512 Homestead; exemption; application; when filed.

It shall be the duty of each owner who wants a homestead exemption under section 77-3506, 77-3507, or 77-3508 to file an application therefor with the county assessor of the county in which the homestead is located after February 1 and on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for that year, except that:

(1) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year;

(2) An owner may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the owner's ability to file the application in a timely manner; and

(3) An owner may file a late application pursuant to section 77-3514.01 if he or she includes a copy of the death certificate of a spouse who died during the year for which the exemption is requested.

Source: Laws 1979, LB 65, § 12; Laws 1980, LB 647, § 7; Laws 1983, LB 195, § 5; Laws 1983, LB 396, § 2; Laws 1984, LB 809, § 8; Laws 1985, Second Spec. Sess., LB 6, § 4; Laws 1989, LB 84, § 12; Laws 1991, LB 9, § 5; Laws 1991, LB 773, § 21; Laws 1995, LB 133, § 1; Laws 1996, LB 1039, § 5; Laws 1997, LB 397, § 27; Laws 2003, LB 192, § 2; Laws 2009, LB94, § 3; Laws 2014, LB1087, § 12; Laws 2018, LB1089, § 15; Laws 2021, LB313, § 1.

77-3514.01 Homestead; exemption; late application because of medical condition or death of spouse; filing; form; county assessor; powers and duties; rejection; notice; hearing.

(1) A late application filed pursuant to section 77-3512 because of a medical condition which impaired the claimant's ability to apply in a timely manner shall only be for the current tax year. The late application shall be filed with the county assessor on or before June 30 of the year in which the real estate taxes levied on the property for the current year become delinquent.

(2) A late application filed pursuant to section 77-3512 because of the death of a spouse during the year for which the exemption is requested shall only be for the current tax year. The late application shall be filed with the county assessor on or before June 30 of the year in which the real estate taxes levied on the property for the current year become delinquent.

(3) Applications filed under subsection (1) of this section shall include certification of the medical condition affecting the filing from a physician, physician assistant, or advanced practice registered nurse. The medical certification shall be made on forms prescribed by the Tax Commissioner.

(4) Applications filed under subsection (2) of this section shall include a copy of the death certificate of the deceased spouse.

(5) The county assessor shall approve or reject the late filing within thirty days of receipt of the late filing. If approved, the county assessor shall mark it approved and sign the application. In case he or she finds that the exemption should not be allowed by reason of not being in conformity to law, the county assessor shall mark the application as rejected and state the reason for rejection and sign the application. In any case when the county assessor rejects an exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application. The notice shall be on forms prescribed by the Tax Commissioner. In any case when the county assessor rejects an exemption, such applicant may obtain a hearing before the county board of equalization in the manner described by section 77-3519.

Source: Laws 2009, LB94, § 7; Laws 2018, LB1089, § 18; Laws 2021, LB313, § 2.

77-3517 Homestead; application for exemption; county assessor; Tax Commissioner; duties; refunds; liens; interest.

(1) On or before August 1 of each year, the county assessor shall forward the approved applications for homestead exemptions and a copy of the certification of disability status that have been examined pursuant to section 77-3516 to the

Tax Commissioner. The Tax Commissioner shall determine if the applicant meets the income requirements and may also review any other application information he or she deems necessary in order to determine whether the application should be approved. The Tax Commissioner shall, on or before November 1, certify his or her determinations to the county assessor. If the application is approved, the county assessor shall make the proper deduction on the assessment rolls. If the application is denied or approved in part, the Tax Commissioner shall notify the applicant of the denial or partial approval by mailing written notice to the applicant at the address shown on the application. The applicant may appeal the Tax Commissioner's denial or partial approval pursuant to section 77-3520. Late applications authorized under section 77-3512 shall be processed in a similar manner after approval by the county assessor. If the Tax Commissioner approves a late application after any of the real estate taxes in question become delinquent, such delinquency and any interest associated with the amount of the approved exemption shall be removed from the tax rolls of the county within thirty days after the county assessor receives notice from the Tax Commissioner of the approved exemption.

(2)(a) Upon his or her own action or upon a request by an applicant, a spouse, or an owner-occupant, the Tax Commissioner may review any information necessary to determine whether an application is in compliance with sections 77-3501 to 77-3529. Any action taken by the Tax Commissioner pursuant to this subsection shall be taken within three years after December 31 of the year in which the exemption was claimed.

(b) If after completion of the review the Tax Commissioner determines that an exemption should have been approved or increased, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant and the county treasurer and assessor of his or her determination. The applicant, spouse, or owner-occupant shall receive a refund of the tax, if any, that was paid as a result of the exemption being denied, in whole or in part. The county treasurer shall make the refund and shall amend the county's claim for reimbursement from the state.

(c) If after completion of the review the Tax Commissioner determines that an exemption should have been denied or reduced, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant of such denial or reduction. The applicant, the spouse, and any owner-occupant may appeal the Tax Commissioner's denial or reduction pursuant to section 77-3520. Upon the expiration of the appeal period in section 77-3520, the Tax Commissioner shall notify the county assessor of the denial or reduction and the county assessor shall remove or reduce the exemption from the tax rolls of the county. Upon notification by the Tax Commissioner to the county assessor, the amount of tax due as a result of the action of the Tax Commissioner shall become a lien on the homestead until paid. Upon attachment of the lien, the county treasurer shall refund to the Tax Commissioner the amount of tax equal to the denied or reduced exemption for deposit into the General Fund. No lien shall be created if a change in ownership of the homestead or death of the applicant, the spouse, and all other owner-occupants has occurred prior to the Tax Commissioner's notice to the county assessor. Beginning thirty days after the county assessor receives approval from the county board to remove or reduce the exemption from the tax rolls of the county, interest at the rate specified in section

45-104.01, as such rate may from time to time be adjusted by the Legislature, shall begin to accrue on the amount of tax due.

Source: Laws 1979, LB 65, § 17; Laws 1980, LB 647, § 10; Laws 1986, LB 1258, § 8; Laws 1987, LB 376A, § 13; Laws 1989, LB 84, § 14; Laws 1991, LB 9, § 7; Laws 1991, LB 773, § 25; Laws 1995, LB 133, § 5; Laws 1995, LB 499, § 2; Laws 1996, LB 1039, § 9; Laws 1997, LB 397, § 31; Laws 2010, LB877, § 6; Laws 2014, LB1087, § 16; Laws 2017, LB217, § 21; Laws 2021, LB313, § 3.

77-3519 Homestead; exemption; county assessor; rejection; applicant; complaint; contents; hearing; appeal.

In any case when the county assessor rejects an application for homestead exemption, such applicant may obtain a hearing before the county board of equalization by filing a written complaint with the county clerk. If the application for homestead exemption was rejected on the basis of value, the complaint must be filed by June 30. The county board of equalization may, by majority vote, extend such deadline to July 20. If the application for homestead exemption was rejected on any other basis, the complaint must be filed within thirty days from receipt of the notice from the county assessor showing such rejection. Such complaint shall specify his or her grievances and the pertinent facts in relation thereto, in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended. The board may take evidence pertinent to such complaint, and for that purpose may compel the attendance of witnesses and the production of books, records, and papers by subpoena. The board shall issue its decision on the complaint within thirty days after the filing of the complaint. Notice of the board's decision shall be mailed by the county clerk to the applicant within seven days after the decision. The taxpayer shall have the right to appeal from the board's decision with reference to the application for homestead exemption to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision.

Source: Laws 1979, LB 65, § 19; Laws 1987, LB 376A, § 14; Laws 1995, LB 490, § 177; Laws 2004, LB 973, § 44; Laws 2011, LB384, § 19; Laws 2019, LB512, § 27.

77-3523 Homestead; exemption; county treasurer and county assessor; certify tax revenue lost within county; reimbursed; manner; distribution.

The county treasurer and county assessor shall, on or before November 30 of each year, certify to the Tax Commissioner the total tax revenue that will be lost to all taxing agencies within the county from taxes levied and assessed in that year because of exemptions allowed under sections 77-3501 to 77-3529. The county treasurer and county assessor may amend the certification to show any change or correction in the total tax that will be lost until May 30 of the next succeeding year. If a homestead exemption is approved, denied, or corrected by the Tax Commissioner under subsection (2) of section 77-3517 after May 1 of the next year, the county treasurer and county assessor shall prepare and submit amended reports to the Tax Commissioner and the political subdivisions covering any affected year and shall adjust the reimbursement to the county and the other political subdivisions by adjusting the reimbursement due under

this section in later years. The Tax Commissioner shall, on or before January 1 next following such certification or within thirty days of any amendment to the certification, notify the Director of Administrative Services of the amount so certified to be reimbursed by the state. Reimbursement of the funds lost shall be made to each county according to the certification and shall be distributed in six as nearly as possible equal monthly payments on the last business day of each month beginning in January. The Director of Administrative Services shall, on the last business day of each month, issue payments by electronic funds transfer. Out of the amount so received the county treasurer shall distribute to each of the taxing agencies within his or her county the full amount so lost by such agency, except that one percent of such amount shall be deposited in the county general fund and that the amount due a Class V school district shall be paid to the district and the county shall be compensated one percent of such amount. Each taxing agency shall, in preparing its annual or biennial budget, take into account the amount to be received under this section.

Source: Laws 1979, LB 65, § 23; Laws 1983, LB 494, § 7; Laws 1986, LB 1258, § 10; Laws 1987, LB 376A, § 16; Laws 1994, LB 902, § 42; Laws 1995, LB 499, § 3; Laws 1996, LB 1040, § 5; Laws 1997, LB 397, § 32; Laws 2000, LB 1116, § 17; Laws 2009, LB166, § 18; Laws 2014, LB1087, § 19; Laws 2018, LB1089, § 21; Laws 2021, LB509, § 13; Laws 2022, LB800, § 344.
Operative date July 21, 2022.

ARTICLE 36

SCHOOL READINESS TAX CREDIT ACT

Section
77-3603. Terms, defined.
77-3604. Child care and education provider; income tax credit; application; contents; approval; distribution.

77-3603 Terms, defined.

For purposes of the School Readiness Tax Credit Act:

(1) Child means an individual who is five years of age or less;

(2) Child care and education provider means a person who owns or operates an eligible program;

(3) Department means the Department of Revenue;

(4) Eligible program means an applicable child care and early childhood education program as defined in section 71-1954 that has applied to participate in the quality rating and improvement system developed under the Step Up to Quality Child Care Act and has been assigned a quality scale rating;

(5) Eligible staff member means an individual who is employed with, or who is a self-employed individual providing child care and early childhood education for, an eligible program for at least six months of the taxable year and who is listed in the Nebraska Early Childhood Professional Record System and classified as provided in subsection (4) of section 71-1962. Eligible staff member does not include certificated teaching and administrative staff employed by programs established pursuant to section 79-1104; and

(6) Quality scale rating means the rating of an eligible program under the Step Up to Quality Child Care Act which is expressed in terms of steps, with step one being the lowest rating and step five being the highest rating.

Source: Laws 2016, LB889, § 3; Laws 2020, LB266, § 2.

Cross References

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

77-3604 Child care and education provider; income tax credit; application; contents; approval; distribution.

(1) A child care and education provider whose eligible program provides services to children who participate in the child care subsidy program established pursuant to section 68-1202 may apply to the department to receive a nonrefundable tax credit against the income tax imposed by the Nebraska Revenue Act of 1967.

(2) The nonrefundable credit provided in this section shall be an amount equal to the average monthly number of children described in subsection (1) of this section who are attending the child care and education provider's eligible program, multiplied by an amount based upon the quality scale rating of such eligible program as follows:

Quality Scale Rating of Eligible Program	Tax Credit Per Child Attending Eligible Program
Step Five	$750
Step Four	$500
Step Three	$250
Step Two	$ 0
Step One	$ 0

(3) A child care and education provider shall apply for the credit provided in this section by submitting an application to the department with the following information:

(a) The number of children described in subsection (1) of this section who attended the child care and education provider's eligible program during each month of the most recently completed taxable year;

(b) Documentation to show the quality scale rating of the child care and education provider's eligible program; and

(c) Any other documentation required by the department.

(4) Subject to subsection (5) of this section, if the department determines that the child care and education provider qualifies for tax credits under this section, it shall approve the application and certify the amount of credits approved to the child care and education provider.

(5) The department shall consider applications in the order in which they are received and may approve tax credits under this section in any taxable year until the aggregate limit allowed under subsection (1) of section 77-3606 has been reached.

(6) If the child care and education provider is (a) a partnership, (b) a limited liability company, (c) a corporation having an election in effect under subchapter S of the Internal Revenue Code of 1986, as amended, or (d) an estate or trust, the tax credit provided in this section may be distributed in the same manner and proportion as the partner, member, shareholder, or beneficiary reports the partnership, limited liability company, subchapter S corporation, estate, or trust income.

(7) The credit provided in this section shall be available for taxable years beginning or deemed to begin on or after January 1, 2017, and before January 1, 2022, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2016, LB889, § 4; Laws 2020, LB266, § 3.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 38
FINANCIAL INSTITUTION TAXATION

Section
77-3806. Franchise tax; filing requirements; general provisions applicable; refunds; credit.

77-3806 Franchise tax; filing requirements; general provisions applicable; refunds; credit.

(1) The tax return shall be filed and the total amount of the franchise tax shall be due on the fifteenth day of the third month after the end of the taxable year. No extension of time to pay the tax shall be granted. If the Tax Commissioner determines that the amount of tax can be computed from available information filed by the financial institutions with either state or federal regulatory agencies, the Tax Commissioner may, by regulation, waive the requirement for the financial institutions to file returns.

(2) Sections 77-2714 to 77-27,135 relating to deficiencies, penalties, interest, the collection of delinquent amounts, and appeal procedures for the tax imposed by section 77-2734.02 shall also apply to the tax imposed by section 77-3802. If the filing of a return is waived by the Tax Commissioner, the payment of the tax shall be considered the filing of a return for purposes of sections 77-2714 to 77-27,135.

(3) No refund of the tax imposed by section 77-3802 shall be allowed unless a claim for such refund is filed within ninety days of the date on which (a) the tax is due or was paid, whichever is later, (b) a change is made to the amount of deposits or the net financial income of the financial institution by a state or federal regulatory agency, or (c) the Nebraska Investment Finance Authority issues an eligibility statement to the financial institution pursuant to the Affordable Housing Tax Credit Act.

(4) Any such financial institution shall receive a credit on the franchise tax as provided under the Affordable Housing Tax Credit Act, the Community Development Assistance Act, the Nebraska Higher Blend Tax Credit Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the Nebraska Property Tax Incentive Act, and the New Markets Job Growth Investment Act.

Source: Laws 1986, LB 774, § 6; Laws 1990, LB 1241, § 16; Laws 2001, LB 433, § 7; Laws 2007, LB367, § 25; Laws 2012, LB1128, § 25; Laws 2014, LB191, § 21; Laws 2016, LB884, § 22; Laws 2020, LB1107, § 135; Laws 2022, LB1261, § 15.
Operative date July 21, 2022.

Cross References

Affordable Housing Tax Credit Act, see section 77-2501.

Community Development Assistance Act, see section 13-201.
Nebraska Higher Blend Tax Credit Act, see section 77-7001.
Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.
Nebraska Property Tax Incentive Act, see section 77-6701.
New Markets Job Growth Investment Act, see section 77-1101.

ARTICLE 39

UNIFORM STATE TAX LIEN REGISTRATION AND ENFORCEMENT

(a) UNIFORM STATE TAX LIEN REGISTRATION AND ENFORCEMENT ACT

Section
77-3903. Notice of lien; filing; requirements; fee; billing.

(a) UNIFORM STATE TAX LIEN REGISTRATION AND ENFORCEMENT ACT

77-3903 Notice of lien; filing; requirements; fee; billing.

(1)(a) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon real property shall be presented in the office of the Secretary of State. Such notice of lien shall be transmitted by the Secretary of State to and filed in the office of the register of deeds by the register of deeds of the county or counties in which the real property subject to the lien is situated as designated in the notice of lien. The register of deeds shall enter the notice in the alphabetical state tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such presentments to the Secretary of State may be made by direct input to the Secretary of State's database or by other electronic means. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices, except that in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained. A lien subject to this subsection shall be effective upon real property when filed by the register of deeds as provided in this subsection.

(b) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon personal property shall be filed in the office of the Secretary of State. The Secretary of State shall enter the notice in the state's central tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such filings with the Secretary of State may be filed by direct input to the Secretary of State's database or by other electronic means. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices.

(2) The uniform fee, payable to the Secretary of State, for presenting for filing, releasing, continuing, or subordinating or for filing, releasing, continuing, or subordinating each tax lien pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be two times the fee required for recording instruments with the register of deeds as provided in section 33-109. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subdivision (1)(a) of this

section shall be the fee required for recording instruments with the register of deeds as provided in section 33-109. The Secretary of State shall remit each fee received pursuant to this subsection to the State Treasurer for credit to the Secretary of State Cash Fund, except that of the fees received pursuant to this subsection, the Secretary of State shall remit the fee required for recording instruments with the register of deeds as provided in section 33-109 to the register of deeds of a county for each designation of such county in a filing pursuant to subdivision (1)(a) of this section.

(3) The Secretary of State shall bill the Tax Commissioner or Commissioner of Labor on a monthly basis for fees for documents presented to or filed with the Secretary of State. No payment of any fee shall be required at the time of presenting or filing any such lien document.

Source: Laws 1986, LB 1027, § 216; Laws 1987, LB 523, § 32; Laws 1995, LB 490, § 179; Laws 1998, LB 1321, § 100; Laws 1999, LB 165, § 4; Laws 1999, LB 550, § 46; Laws 2007, LB223, § 23; Laws 2007, LB334, § 89; Laws 2012, LB14, § 7; Laws 2017, LB152, § 4; Laws 2017, LB268, § 17; Laws 2020, LB910, § 32.

ARTICLE 41

EMPLOYMENT AND INVESTMENT GROWTH ACT

Section
77-4110. Annual report; contents; joint hearing.
77-4111. Tax Commissioner; rules and regulations.

77-4110 Annual report; contents; joint hearing.

(1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than October 31 of each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Revenue shall, on or before December 15 of each even-numbered year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) The report shall list (a) the agreements which have been signed during the previous fiscal year, (b) the agreements which are still in effect, (c) the identity of each taxpayer, and (d) the location of each project.

(3) The report shall also state by industry group (a) the specific incentive options applied for under the Employment and Investment Growth Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the number of jobs created, (g) the total number of employees employed in the state by the taxpayer on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state by the taxpayer on subsequent reporting dates, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created subsequent to the application date, (j) the total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed to the applicants, (m) the credits

outstanding, and (n) the value of personal property exempted by class in each county.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1987, LB 775, § 10; Laws 1990, LB 431, § 3; Laws 2007, LB223, § 26; Laws 2012, LB782, § 138; Laws 2013, LB612, § 4; Laws 2022, LB1150, § 5.
Operative date April 20, 2022.

77-4111 Tax Commissioner; rules and regulations.

The Tax Commissioner may adopt and promulgate all rules and regulations necessary to carry out the purposes of the Employment and Investment Growth Act.

Source: Laws 1988, LB 1234, § 9; Laws 2019, LB512, § 28.

ARTICLE 42

PROPERTY TAX CREDIT ACT

Section
77-4212. Property tax credit; county treasurer; duties; disbursement to counties; Property Tax Administrator; State Treasurer; duties.

77-4212 Property tax credit; county treasurer; duties; disbursement to counties; Property Tax Administrator; State Treasurer; duties.

(1) For tax year 2007, the amount of relief granted under the Property Tax Credit Act shall be one hundred five million dollars. For tax year 2008, the amount of relief granted under the act shall be one hundred fifteen million dollars. It is the intent of the Legislature to fund the Property Tax Credit Act for tax years after tax year 2008 using available revenue. For tax year 2017, the amount of relief granted under the act shall be two hundred twenty-four million dollars. For tax year 2020 and each tax year thereafter, the minimum amount of relief granted under the act shall be two hundred seventy-five million dollars. If money is transferred or credited to the Property Tax Credit Cash Fund pursuant to any other state law, such amount shall be added to the minimum amount required under this subsection when determining the total amount of relief granted under the act. The relief shall be in the form of a property tax credit which appears on the property tax statement.

(2)(a) For tax years prior to tax year 2017, to determine the amount of the property tax credit, the county treasurer shall multiply the amount disbursed to the county under subdivision (4)(a) of this section by the ratio of the real property valuation of the parcel to the total real property valuation in the county. The amount determined shall be the property tax credit for the property.

(b) Beginning with tax year 2017, to determine the amount of the property tax credit, the county treasurer shall multiply the amount disbursed to the county under subdivision (4)(b) of this section by the ratio of the credit allocation valuation of the parcel to the total credit allocation valuation in the county. The amount determined shall be the property tax credit for the property.

(3) If the real property owner qualifies for a homestead exemption under sections 77-3501 to 77-3529, the owner shall also be qualified for the relief provided in the act to the extent of any remaining liability after calculation of the relief provided by the homestead exemption. If the credit results in a property tax liability on the homestead that is less than zero, the amount of the credit which cannot be used by the taxpayer shall be returned to the Property Tax Administrator by July 1 of the year the amount disbursed to the county was disbursed. The Property Tax Administrator shall immediately credit any funds returned under this subsection to the Property Tax Credit Cash Fund. Upon the return of any funds under this subsection, the county treasurer shall electronically file a report with the Property Tax Administrator, on a form prescribed by the Tax Commissioner, indicating the amount of funds distributed to each taxing unit in the county in the year the funds were returned, any collection fee retained by the county in such year, and the amount of unused credits returned.

(4)(a) For tax years prior to tax year 2017, the amount disbursed to each county shall be equal to the amount available for disbursement determined under subsection (1) of this section multiplied by the ratio of the real property valuation in the county to the real property valuation in the state. By September 15, the Property Tax Administrator shall determine the amount to be disbursed under this subdivision to each county and certify such amounts to the State Treasurer and to each county. The disbursements to the counties shall occur in two equal payments, the first on or before January 31 and the second on or before April 1. After retaining one percent of the receipts for costs, the county treasurer shall allocate the remaining receipts to each taxing unit levying taxes on taxable property in the tax district in which the real property is located in the same proportion that the levy of such taxing unit bears to the total levy on taxable property of all the taxing units in the tax district in which the real property is located.

(b) Beginning with tax year 2017, the amount disbursed to each county shall be equal to the amount available for disbursement determined under subsection (1) of this section multiplied by the ratio of the credit allocation valuation in the county to the credit allocation valuation in the state. By September 15, the Property Tax Administrator shall determine the amount to be disbursed under this subdivision to each county and certify such amounts to the State Treasurer and to each county. The disbursements to the counties shall occur in two equal payments, the first on or before January 31 and the second on or before April 1. After retaining one percent of the receipts for costs, the county treasurer shall allocate the remaining receipts to each taxing unit based on its share of the credits granted to all taxpayers in the taxing unit.

(5) For purposes of this section, credit allocation valuation means the taxable value for all real property except agricultural land and horticultural land, one hundred twenty percent of taxable value for agricultural land and horticultural land that is not subject to special valuation, and one hundred twenty percent of taxable value for agricultural land and horticultural land that is subject to special valuation.

(6) The State Treasurer shall transfer from the General Fund to the Property Tax Credit Cash Fund one hundred five million dollars by August 1, 2007, and one hundred fifteen million dollars by August 1, 2008.

(7) The Legislature shall have the power to transfer funds from the Property Tax Credit Cash Fund to the General Fund.

Source: Laws 2007, LB367, § 4; Laws 2014, LB1087, § 21; Laws 2016, LB958, § 1; Laws 2017, LB217, § 22; Laws 2020, LB1107, § 136; Laws 2021, LB509, § 14.

ARTICLE 46

REVENUE FORECASTING

Section
77-4602. Actual General Fund net receipts; public statement by Tax Commissioner; Tax Commissioner; duties; transfer of funds; when.
77-4603. Special session of Legislature; new certification required; recertification; when.

77-4602 Actual General Fund net receipts; public statement by Tax Commissioner; Tax Commissioner; duties; transfer of funds; when.

(1) Within fifteen days after the end of each month, the Tax Commissioner shall provide a public statement of actual General Fund net receipts, a comparison of such actual net receipts to the monthly estimated net receipts from the most recent forecast provided by the Nebraska Economic Forecasting Advisory Board pursuant to section 77-27,158, and a comparison of such actual net receipts to the monthly actual net receipts for the same month of the previous fiscal year.

(2) Within fifteen days after the end of each fiscal year, the public statement shall also include (a) a summary of actual General Fund net receipts and estimated General Fund net receipts for the fiscal year as certified pursuant to sections 77-4601 and 77-4603 and (b) a comparison of the actual General Fund net receipts for the fiscal year to the actual General Fund net receipts for the previous fiscal year.

(3)(a) Within fifteen days after the end of fiscal year 2020-21 and each fiscal year thereafter through fiscal year 2022-23, the Tax Commissioner shall determine the balance of the Cash Reserve Fund.

(b) If the balance of the Cash Reserve Fund is less than five hundred million dollars:

(i) The Tax Commissioner shall determine:

(A) Actual General Fund net receipts for the most recently completed fiscal year minus estimated General Fund net receipts for such fiscal year as certified pursuant to sections 77-4601 and 77-4603; and

(B) Actual General Fund net receipts for the most recently completed fiscal year minus one hundred three and one-half percent of actual General Fund net receipts for the prior fiscal year.

(ii) If the amounts calculated under subdivisions (3)(b)(i)(A) and (3)(b)(i)(B) of this section are both positive numbers, the Tax Commissioner shall certify (A) the amount determined under subdivision (3)(b)(i)(A) of this section and (B) fifty percent of the amount determined under subdivision (3)(b)(i)(B) of this section to the State Treasurer. The State Treasurer shall transfer the difference between the two certified amounts to the Cash Reserve Fund.

(iii) If the amount calculated under subdivision (3)(b)(i)(A) of this section is a positive number but the amount calculated under subdivision (3)(b)(i)(B) of this

section is a negative number, the Tax Commissioner shall certify the amount determined under subdivision (3)(b)(i)(A) of this section to the State Treasurer and the State Treasurer shall transfer such certified amount to the Cash Reserve Fund.

(c) If the balance of the Cash Reserve Fund is five hundred million dollars or more:

(i) The Tax Commissioner shall determine:

(A) Actual General Fund net receipts for the most recently completed fiscal year minus estimated General Fund net receipts for such fiscal year as certified pursuant to sections 77-4601 and 77-4603; and

(B) Actual General Fund net receipts for the most recently completed fiscal year minus one hundred three and one-half percent of actual General Fund net receipts for the prior fiscal year.

(ii) If the amounts calculated under subdivisions (3)(c)(i)(A) and (3)(c)(i)(B) of this section are both positive numbers, the Tax Commissioner shall certify (A) the amount determined under subdivision (3)(c)(i)(A) of this section and (B) the amount determined under subdivision (3)(c)(i)(B) of this section to the State Treasurer. The State Treasurer shall transfer the difference between the two certified amounts to the Cash Reserve Fund.

(iii) If the amount calculated under subdivision (3)(c)(i)(A) of this section is a positive number but the amount calculated under subdivision (3)(c)(i)(B) of this section is a negative number, the Tax Commissioner shall certify the amount determined under subdivision (3)(c)(i)(A) of this section to the State Treasurer and the State Treasurer shall transfer such certified amount to the Cash Reserve Fund.

(4)(a) Within fifteen days after the end of fiscal year 2023-24 and each fiscal year thereafter, the Tax Commissioner shall determine the following:

(i) Actual General Fund net receipts for the most recently completed fiscal year minus estimated General Fund net receipts for such fiscal year as certified pursuant to sections 77-4601 and 77-4603; and

(ii) Fifty percent of the product of actual General Fund net receipts for the most recently completed fiscal year times the difference between the annual percentage increase in the actual General Fund net receipts for the most recently completed fiscal year and the average annual percentage increase in the actual General Fund net receipts over the twenty previous fiscal years, excluding the year in which the annual percentage change in actual General Fund net receipts is the lowest.

(b) If the number determined under subdivision (4)(a)(i) of this section is a positive number, the Tax Commissioner shall immediately certify the greater of the two numbers determined under subdivision (4)(a) of this section to the director. The State Treasurer shall transfer the certified amount from the General Fund to the Cash Reserve Fund upon certification by the director of such amount. The transfer shall be made according to the following schedule:

(i) An amount equal to the amount determined under subdivision (4)(a)(i) of this section shall be transferred immediately; and

(ii) The remainder, if any, shall be transferred by the end of the subsequent fiscal year.

(c) If the transfer required under subdivision (4)(b) of this section causes the balance in the Cash Reserve Fund to exceed sixteen percent of the total budgeted General Fund expenditures for the current fiscal year, such transfer shall be reduced so that the balance of the Cash Reserve Fund does not exceed such amount.

(d) Nothing in this subsection prohibits the balance in the Cash Reserve Fund from exceeding sixteen percent of the total budgeted General Fund expenditures each fiscal year if the Legislature determines it necessary to prepare for and respond to budgetary requirements which may include, but are not limited to, capital construction projects and responses to emergencies.

Source: Laws 1993, LB 38, § 2; Laws 1996, LB 1290, § 4; Laws 2019, LB638, § 1; Laws 2020, LB1107, § 137; Laws 2021, LB180, § 1.

77-4603 Special session of Legislature; new certification required; recertification; when.

(1) If an estimate of General Fund net receipts is changed in a regular or extraordinary meeting of the Nebraska Economic Forecasting Advisory Board and such change results in a special session of the Legislature to revise current fiscal year General Fund appropriations, the Tax Commissioner and the Legislative Fiscal Analyst shall certify the monthly receipt estimates, taking into consideration the most recent estimate of General Fund net receipts made by the Nebraska Economic Forecasting Advisory Board plus legislation enacted which has an impact on receipts that was not included in the forecast. The new monthly certification shall be made by the fifteenth day of the month following the adjournment of the special session of the Legislature.

(2) If an estimate of General Fund net receipts is reduced in a regular or extraordinary meeting of the Nebraska Economic Forecasting Advisory Board, the Tax Commissioner and the Legislative Fiscal Analyst shall recertify the monthly receipt estimates, taking into consideration the most recent estimate of General Fund net receipts made by the Nebraska Economic Forecasting Advisory Board plus legislation enacted which has an impact on receipts that was not included in the forecast. The new monthly certification shall be made by the fifteenth day of the month following the meeting of the Nebraska Economic Forecasting Advisory Board.

(3) The new certified annual and monthly receipt estimates shall be used for the public statements required under subsection (2) of section 77-4602.

Source: Laws 1993, LB 38, § 3; Laws 1996, LB 1290, § 5; Laws 2021, LB180, § 2.

ARTICLE 49

QUALITY JOBS ACT

Section
77-4933. Report; contents; joint hearing.

77-4933 Report; contents; joint hearing.

(1) The Department of Revenue shall submit electronically an annual report to the Legislature no later than October 31 of each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The report shall list (a) the agreements

which have been signed during the previous fiscal year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project. The department shall, on or before December 15 of each even-numbered year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) The report shall also state by industry group (a) the amount of wage benefit credits allowed under the Quality Jobs Act, (b) the number of direct jobs created at the project, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the project.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1995, LB 829, § 33; Laws 2007, LB223, § 27; Laws 2012, LB782, § 139; Laws 2013, LB612, § 5; Laws 2022, LB1150, § 6. Operative date April 20, 2022.

ARTICLE 50

TAX EQUALIZATION AND REVIEW COMMISSION ACT

Section
77-5004. Commissioner; qualifications; conflict of interests; continuing education; expenses; mileage.
77-5013. Commission; jurisdiction; time for filing; filing fee.
77-5015.01. Repealed. Laws 2020, LB4, § 4.
77-5023. Commission; power to change value; acceptable range.

77-5004 Commissioner; qualifications; conflict of interests; continuing education; expenses; mileage.

(1) Each commissioner shall be a qualified voter and resident of the state and a domiciliary of the district he or she represents.

(2) Each commissioner shall devote his or her full time and efforts to the discharge of his or her duties and shall not hold any other office under the laws of this state, any city or county in this state, or the United States Government while serving on the commission. Each commissioner shall possess:

(a) Appropriate knowledge of terms commonly used in or related to real property appraisal and of the writing of appraisal reports;

(b) Adequate knowledge of depreciation theories, cost estimating, methods of capitalization, and real property appraisal mathematics;

(c) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and evaluating of data involved in the valuation of real property, including complex industrial properties and mass appraisal techniques;

(d) Knowledge of the law relating to taxation, civil and administrative procedure, due process, and evidence in Nebraska;

(e) At least thirty hours of successfully completed class hours in courses of study, approved by the Real Property Appraiser Board, which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. If a commissioner has not received such training prior to his or her appointment, such training shall be completed within one year after appointment; and

(f) Such other qualifications and skills as reasonably may be requisite for the effective and reliable performance of the commission's duties.

(3) At least one commissioner shall possess the certification or training required to become a licensed residential real property appraiser as set forth in section 76-2230.

(4) At least one commissioner shall have been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior service as a judge, and shall be currently admitted to practice before the Nebraska Supreme Court.

(5) No commissioner or employee of the commission shall hold any position of profit or engage in any occupation or business interfering with or inconsistent with his or her duties as a commissioner or employee. A person is not eligible for appointment and may not hold the office of commissioner or be appointed by the commission to or hold any office or position under the commission if he or she holds any official office or position.

(6) Each commissioner shall annually attend a seminar or class of at least two days' duration that is:

(a) Sponsored by a recognized assessment or appraisal organization, in each of these areas: Utility and railroad appraisal; appraisal of complex industrial properties; appraisal of other hard to assess properties; and mass appraisal, residential or agricultural appraisal, or assessment administration; or

(b) Pertaining to management, law, civil or administrative procedure, or other knowledge or skill necessary for performing the duties of the office.

(7) Each commissioner shall within two years after his or her appointment attend at least thirty hours of instruction that constitutes training for judges or administrative law judges.

(8) The commissioners shall be considered employees of the state for purposes of sections 81-1320 to 81-1328 and 84-1601 to 84-1615.

(9) The commissioners shall be reimbursed as prescribed in sections 81-1174 to 81-1177 for expenses in the performance of their official duties pursuant to the Tax Equalization and Review Commission Act.

(10) Due to the domicile requirements of subsection (1) of this section and subsection (1) of section 77-5003, each commissioner shall be reimbursed for mileage at the rate provided in section 81-1176 for actual round trip travel from the commissioner's residence to the state office building described in section 81-1108.37 or to the location of any hearing or other official business of the commission. Reimbursements under this subsection shall be made from the Tax Equalization and Review Commission Cash Fund.

Source: Laws 1995, LB 490, § 4; Laws 1996, LB 1038, § 2; Laws 1999, LB 32, § 1; Laws 2001, LB 170, § 19; Laws 2001, LB 465, § 4; Laws 2002, LB 994, § 28; Laws 2003, LB 292, § 15; Laws 2004,

LB 973, § 47; Laws 2006, LB 778, § 73; Laws 2007, LB186, § 25; Laws 2008, LB965, § 20; Laws 2010, LB931, § 25; Laws 2011, LB384, § 22; Laws 2020, LB4, § 1; Laws 2020, LB381, § 85.

77-5013 Commission; jurisdiction; time for filing; filing fee.

(1) The commission obtains exclusive jurisdiction over an appeal or petition when:

(a) The commission has the power or authority to hear the appeal or petition;

(b) An appeal or petition is timely filed;

(c) The filing fee, if applicable, is timely received and thereafter paid; and

(d) In the case of an appeal, a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.

Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

(3) Except as provided in subsection (4) of this section, filing fees shall be as follows:

(a) For each appeal or petition regarding the taxable value of a parcel of real property, the filing fee shall be:

(i) Forty dollars if the taxable value of the parcel is less than two hundred fifty thousand dollars;

(ii) Fifty dollars if the taxable value of the parcel is at least two hundred fifty thousand dollars but less than five hundred thousand dollars;

(iii) Sixty dollars if the taxable value of the parcel is at least five hundred thousand dollars but less than one million dollars; or

(iv) Eighty-five dollars if the taxable value of the parcel is at least one million dollars; or

(b) For any other appeal or petition filed with the commission, the filing fee shall be forty dollars.

(4) No filing fee shall be required for an appeal by a county assessor, the Tax Commissioner, or the Property Tax Administrator acting in his or her official capacity or a county board of equalization acting in its official capacity.

(5) The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations.

Source: Laws 1995, LB 490, § 13; Laws 1998, LB 1104, § 28; Laws 2001, LB 170, § 21; Laws 2004, LB 973, § 49; Laws 2010, LB877, § 8; Laws 2020, LB4, § 2.

77-5015.01 Repealed. Laws 2020, LB4, § 4.

77-5023 Commission; power to change value; acceptable range.

(1) Pursuant to section 77-5022, the commission shall have the power to increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that all classes or subclasses of real property in all counties fall within an acceptable range.

(2) An acceptable range is the percentage of variation from a standard for valuation as measured by an established indicator of central tendency of assessment. Acceptable ranges are: (a) For agricultural land and horticultural land as defined in section 77-1359, sixty-nine to seventy-five percent of actual value, except that for school district taxes levied to pay the principal and interest on bonds that are approved by a vote of the people on or after January 1, 2022, the acceptable range is forty-four to fifty percent of actual value; (b) for lands receiving special valuation, sixty-nine to seventy-five percent of special valuation as defined in section 77-1343, except that for school district taxes levied to pay the principal and interest on bonds that are approved by a vote of the people on or after January 1, 2022, the acceptable range is forty-four to fifty percent of special valuation as defined in section 77-1343; and (c) for all other real property, ninety-two to one hundred percent of actual value.

(3) Any increase or decrease shall cause the level of value determined by the commission to be at the midpoint of the applicable acceptable range.

(4) Any decrease or increase to a subclass of property shall also cause the level of value determined by the commission for the class from which the subclass is drawn to be within the applicable acceptable range.

(5) Whether or not the level of value determined by the commission falls within an acceptable range or at the midpoint of an acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S. 1943, § 77-506; Laws 1955, c. 289, § 4, p. 918; Laws 1957, c. 323, § 1, p. 1145; Laws 1957, c. 320, § 3, p. 1139; Laws 1979, LB 187, § 193; Laws 1985, LB 268, § 2; Laws 1987, LB 508, § 19; Laws 1992, LB 1063, § 58; Laws 1992, Second Spec. Sess., LB 1, § 56; Laws 1995, LB 137, § 1; R.S.1943, (1996), § 77-506; Laws 1997, LB 397, § 41; Laws 2000, LB 968, § 77; Laws 2001, LB 170, § 23; Laws 2003, LB 291, § 13; Laws 2004, LB 973, § 64; Laws 2006, LB 808, § 44; Laws 2006, LB 968, § 15; Laws 2007, LB167, § 9; Laws 2009, LB166, § 20; Laws 2021, LB2, § 2.

ARTICLE 52

BEGINNING FARMER TAX CREDIT ACT

Section

77-5203 Terms, defined.

For purposes of the Beginning Farmer Tax Credit Act:

(1) Agricultural assets means agricultural land, livestock, farming, or livestock production facilities or buildings and machinery used for farming or livestock production located in Nebraska;

(2) Board means the Beginning Farmer Board created by section 77-5204;

(3) Cash rent agreement means a rental agreement in which the principal consideration given to the owner of agricultural assets is a predetermined amount of money. A flex or variable rent agreement is an alternative form of a cash rent agreement in which a predetermined base rent is adjusted for actual crop yield, crop price, or both according to a predetermined formula;

(4) Farm means any tract of land over ten acres in area used for or devoted to the commercial production of farm products;

(5) Farm product means those plants and animals useful to man and includes, but is not limited to, forages and sod crops, grains and feed crops, dairy and dairy products, poultry and poultry products, livestock, including breeding and grazing livestock, fruits, and vegetables;

(6) Farming or livestock production means the active use, management, and operation of real and personal property for the production of a farm product;

(7) Financial management program means a program for beginning farmers or livestock producers which includes, but is not limited to, assistance in the creation and proper use of record-keeping systems, periodic private consultations with licensed financial management personnel, year-end monthly cash flow analysis, and detailed enterprise analysis;

(8) Owner of agricultural assets means:

(a) An individual or a trustee having an ownership interest in an agricultural asset located within the State of Nebraska who meets any qualifications determined by the board;

(b) A spouse, child, or sibling who acquires an ownership interest in agricultural assets as a joint tenant, heir, or devisee of an individual or trustee who would qualify as an owner of agricultural assets under subdivision (8)(a) of this section; or

(c) A partnership, corporation, limited liability company, or other business entity having an ownership interest in an agricultural asset located within the State of Nebraska which meets any additional qualifications determined by the board;

(9) Qualified beginning farmer or livestock producer means an individual who is a resident individual as defined in section 77-2714.01, who has entered farming or livestock production or is seeking entry into farming or livestock production, who intends to farm or raise crops or livestock on land located within the state borders of Nebraska, and who meets the eligibility guidelines established in section 77-5209 and such other qualifications as determined by the board; and

(10) Share-rent agreement means a rental agreement in which the principal consideration given to the owner of agricultural assets is a predetermined portion of the production of farm products from the rented agricultural assets.

Source: Laws 1999, LB 630, § 4; Laws 2000, LB 1223, § 3; Laws 2006, LB 990, § 9; Laws 2008, LB1027, § 3; Laws 2019, LB560, § 2.

77-5206 Board; officers; expenses.

Once every two years, the members of the board shall elect a chairperson and a vice-chairperson. A member of the board may be reelected to the position of chairperson or vice-chairperson upon the discretion of the board. Members of the board shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1999, LB 630, § 7; Laws 2020, LB381, § 86.

77-5208 Board; meetings; application; approval; deadline.

The board shall meet at least twice during the year. The board shall review pending applications in order to approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, to approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213, and to approve and certify qualified beginning farmers and livestock producers as eligible for the tax credit authorized by section 77-5209.01 and for qualification to claim an exemption of taxable tangible personal property as provided by section 77-5209.02. No new applications for any such programs, tax credits, or exemptions shall be approved or certified by the board after December 31, 2025. Any action taken by the board regarding approval and certification of program eligibility, granting of tax credits, or termination of rental agreements shall require the affirmative vote of at least four members of the board.

Source: Laws 1999, LB 630, § 9; Laws 2006, LB 990, § 10; Laws 2008, LB1027, § 6; Laws 2015, LB538, § 12; Laws 2016, LB1022, § 8; Laws 2021, LB432, § 15.

77-5209 Beginning farmer or livestock producer; qualifications.

(1) The board shall determine who is qualified as a beginning farmer or livestock producer based on the qualifications found in this section. A qualified beginning farmer or livestock producer shall be an individual who: (a) Has a net worth of not more than two hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value; (b) provides the majority of the day-to-day physical labor and management of his or her farming or livestock production operations; (c) has, by the judgment of the board, adequate farming or livestock production experience or demonstrates knowledge in the type of farming or livestock production for which he or she seeks assistance from the board; (d) demonstrates to the board a profit potential by submitting board-approved projected earnings statements and agrees that farming or livestock production is intended to become his or her principal source of income; (e) demonstrates to the board a need for assistance; (f) participates in a financial management program approved by the board; (g) submits a nutrient management plan and a soil conservation plan to the board on any applicable agricultural assets purchased or rented from an owner of agricultural assets; and (h) has such other qualifications as specified by the board. The qualified

beginning farmer or livestock producer net worth thresholds in subdivision (a) of this subsection shall be adjusted annually beginning October 1, 2009, and each October 1 thereafter, by taking the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods divided by the Producer Price Index for 2008 and multiplying the result by the qualified beginning farmer's or livestock producer's net worth threshold. If the resulting amount is not a multiple of twenty-five thousand dollars, the amount shall be rounded to the next lowest twenty-five thousand dollars.

(2) A qualified beginning farmer or livestock producer who has participated in a board approved and certified three-year rental agreement with an owner of agricultural assets shall be eligible to file subsequent applications for different assets.

Source: Laws 1999, LB 630, § 10; Laws 2000, LB 1223, § 5; Laws 2006, LB 990, § 11; Laws 2008, LB1027, § 7; Laws 2009, LB447, § 1; Laws 2019, LB560, § 3.

77-5209.01 Tax credit for financial management program participation.

A qualified beginning farmer or livestock producer in the first, second, or third year of a qualifying three-year rental agreement shall be allowed a one-time refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 for the cost of participation in the financial management program required for eligibility under section 77-5209. The amount of the credit shall be the actual cost of participation in an approved program incurred during the tax year for which the credit is claimed, up to a maximum of five hundred dollars.

Source: Laws 2006, LB 990, § 12; Laws 2019, LB560, § 4.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5211 Owner of agricultural assets; tax credit; when.

(1) Except as otherwise disallowed under subsection (7) of this section, an owner of agricultural assets shall be allowed a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 for agricultural assets rented on a rental agreement basis, including cash rent of agricultural assets or cash equivalent of a share-rent rental, to qualified beginning farmers or livestock producers. Such asset shall be rented at prevailing community rates as determined by the board.

(2) An owner of agricultural assets who has participated in a board approved and certified three-year rental agreement with a beginning farmer or livestock producer shall be eligible to file subsequent applications for different assets.

(3) Except as allowed pursuant to subsection (5) of this section, tax credits for an agricultural asset may be issued for a maximum of three years.

(4) The credit allowed shall be for renting agricultural assets used for farming or livestock production. Such credit shall be granted by the Department of Revenue only after approval and certification by the board and a written three-year rental agreement for such assets is entered into between an owner of agricultural assets and a qualified beginning farmer or livestock producer. An owner of agricultural assets or qualified beginning farmer or livestock producer

may terminate such agreement for reasonable cause upon approval by the board. If an agreement is terminated without fault on the part of the owner of agricultural assets as determined by the board, the tax credit shall not be retroactively disallowed. If an agreement is terminated with fault on the part of the owner of agricultural assets as determined by the board, any prior tax credits claimed by such owner shall be disallowed and recaptured and shall be immediately due and payable to the State of Nebraska.

(5) A credit may be granted to an owner of agricultural assets for renting agricultural assets, including cash rent of agricultural assets or cash equivalent of a share-rent agreement, to any qualified beginning farmer or livestock producer for a period of three years. An owner of agricultural assets shall be eligible for further credits for such assets under the Beginning Farmer Tax Credit Act when the rental agreement is terminated prior to the end of the three-year period through no fault of the owner of agricultural assets. If the board finds that such a termination was not the fault of the owner of the agricultural assets, it may approve the owner for credits arising from a subsequent qualifying rental agreement on the same asset with a different qualified beginning farmer or livestock producer.

(6) Any credit allowable to a partnership, a corporation, a limited liability company, or an estate or trust may be distributed to the partners, members, shareholders, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed.

(7) The credit allowed under this section shall not be allowed to an owner of agricultural assets for a rental agreement with a beginning farmer or livestock producer who is a relative, as defined in section 36-802, of the owner of agricultural assets or of a partner, member, shareholder, or trustee of the owner of agricultural assets unless the rental agreement is included in a written succession plan. Such succession plan shall be in the form of a written contract or other instrument legally binding the parties to a process and timetable for the transfer of agricultural assets from the owner of agricultural assets to the beginning farmer or livestock producer. The succession plan shall provide for the transfer of assets to be completed within a period of no longer than thirty years, except that when the asset to be transferred is land owned by an individual, the period of transfer may be for a period up to the date of death of the owner. The owner of agricultural assets shall be allowed the credit provided for qualified rental agreements under this section if the board certifies the plan as providing a reasonable manner and probability of successful transfer.

Source: Laws 1999, LB 630, § 12; Laws 2000, LB 1223, § 7; Laws 2006, LB 990, § 13; Laws 2008, LB1027, § 8; Laws 2009, LB165, § 15; Laws 2019, LB70, § 17; Laws 2019, LB560, § 5.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5212 Rental agreement; requirements; appeal.

In evaluating a rental agreement between an owner of agricultural assets and a qualified beginning farmer or livestock producer, the board shall not approve and certify credit for an owner of agricultural assets who has, with fault, terminated a prior board approved and certified rental agreement with a qualified beginning farmer or livestock producer or if the agricultural assets have previously been approved in a qualifying rental agreement. Any person

aggrieved by a decision of the board may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1999, LB 630, § 13; Laws 2006, LB 990, § 14; Laws 2019, LB560, § 6.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 56
TAX AMNESTY PROGRAM

Section
77-5601. Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; created; use; investment.

77-5601 Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; created; use; investment.

(1) From August 1, 2004, through October 31, 2004, there shall be conducted a tax amnesty program with regard to taxes due and owing that have not been reported to the Department of Revenue. Any person applying for tax amnesty shall pay all unreported taxes that were due on or before April 1, 2004. Any person that applies for tax amnesty and is accepted by the Tax Commissioner shall have any penalties and interest waived on unreported and delinquent taxes notwithstanding any other provisions of law to the contrary.

(2) To be eligible for the tax amnesty provided by this section, the person shall apply for amnesty within the amnesty period, file a return for each taxable period for which the amnesty is requested by December 31, 2004, if no return has been filed, and pay in full all taxes for which amnesty is sought with the return or within thirty days after the application if a return was filed prior to the amnesty period. Tax amnesty shall not be available for any person that is under civil or criminal audit, investigation, or prosecution for unreported or delinquent taxes by this state or the United States Government on or before April 16, 2004.

(3) The department shall not seek civil or criminal prosecution against any person for any taxable period for which amnesty has been granted. The Tax Commissioner shall develop forms for applying for the tax amnesty program, develop procedures for qualification for tax amnesty, and conduct a public awareness campaign publicizing the program.

(4) If a person elects to participate in the amnesty program, the election shall constitute an express and irrevocable relinquishment of all administrative and judicial rights to challenge the imposition of the tax or its amount. Nothing in this section shall prohibit the department from adjusting a return as a result of any state or federal audit.

(5)(a) Except for any local option sales tax collected and returned to the appropriate municipality and any motor vehicle fuel, diesel fuel, and compressed fuel taxes, which shall be deposited in the Highway Trust Fund or Highway Allocation Fund as provided by law, no less than eighty percent of all revenue received pursuant to the tax amnesty program shall be deposited in the General Fund and ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund. Any amount that would otherwise be deposited in the Department of Revenue

Enforcement Fund that is in excess of the five-hundred-thousand-dollar limitation shall be deposited in the General Fund.

(b) For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Fund shall be appropriated to the department for purposes of employing investigators, agents, and auditors and otherwise increasing personnel for enforcement of the Nebraska Revenue Act of 1967.

(c) For fiscal years after fiscal year 2005-06, twenty percent of all proceeds received during the previous calendar year due to the efforts of auditors and investigators hired pursuant to subdivision (5)(b) of this section, not to exceed seven hundred fifty thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund for purposes of employing investigators and auditors or continuing such employment for purposes of increasing enforcement of the act.

(d) Ten percent of all proceeds received during each calendar year due to the contracts entered into pursuant to section 77-367 shall be deposited in the Department of Revenue Enforcement Fund for purposes of identifying nonfilers of returns, underreporters, nonpayers of taxes, and improper or fraudulent payments.

(6)(a) The department shall prepare a report by April 1, 2005, and by February 1 of each year thereafter detailing the results of the tax amnesty program and the subsequent enforcement efforts. For the report due April 1, 2005, the report shall include (i) the amount of revenue obtained as a result of the tax amnesty program broken down by tax program, (ii) the amount obtained from instate taxpayers and from out-of-state taxpayers, and (iii) the amount obtained from individual taxpayers and from business enterprises.

(b) For reports due in subsequent years, the report shall include (i) the number of personnel hired for purposes of subdivision (5)(b) of this section and their duties, (ii) a description of lists, software, programming, computer equipment, and other technological methods acquired and the purposes of each, and (iii) the amount of new revenue obtained as a result of the new personnel and acquisitions during the prior calendar year, broken down into the same categories as described in subdivision (6)(a) of this section.

(7) The Department of Revenue Enforcement Fund is created. Transfers may be made from the Department of Revenue Enforcement Fund to the General Fund at the direction of the Legislature. The Department of Revenue Enforcement Fund may receive transfers from the Civic and Community Center Financing Fund at the direction of the Legislature for the purpose of administering the Sports Arena Facility Financing Assistance Act. The Department of Revenue Enforcement Fund shall include any money credited to the fund (a) under section 77-2703, and such money shall be used by the Department of Revenue to defray the costs incurred to implement Laws 2019, LB237, (b) under the Mechanical Amusement Device Tax Act, and such money shall be used by the department to defray the costs incurred to implement and enforce Laws 2019, LB538, and any rules and regulations adopted and promulgated to carry out Laws 2019, LB538, and (c) under section 77-2906, and such money shall be used by the Department of Revenue to defray the costs incurred to implement Laws 2020, LB310. Any money in the Department of Revenue Enforcement Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(8) For purposes of this section, taxes mean any taxes collected by the department, including, but not limited to state and local sales and use taxes, individual and corporate income taxes, financial institutions deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

Source: Laws 2004, LB 1017, § 23; Laws 2009, First Spec. Sess., LB3, § 58; Laws 2010, LB779, § 18; Laws 2011, LB297, § 10; Laws 2011, LB642, § 2; Laws 2019, LB237, § 2; Laws 2019, LB538, § 10; Laws 2020, LB310, § 2.

Cross References

Mechanical Amusement Device Tax Act, see section 77-3011.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska State Funds Investment Act, see section 72-1260.
Sports Arena Facility Financing Assistance Act, see section 13-3101.

ARTICLE 57

NEBRASKA ADVANTAGE ACT

Section
77-5705. Base year, defined.
77-5723. Incentives; application; contents; fee; approval; when; agreements; contents; modification.
77-5725. Tiers; requirements; incentives; enumerated; deadlines.
77-5726. Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.
77-5727. Recapture or disallowance of incentives.
77-5731. Reports; content; joint hearing.
77-5735. Changes to sections; when effective; applicability.

77-5705 Base year, defined.

Except for a tier 5 project that is sequential to a tier 2 large data center project, base year means the year immediately preceding the year of application. For a tier 5 project that is sequential to a tier 2 large data center project, the base year means the last year of the tier 2 large data center project entitlement period relating to sales tax exemptions.

Source: Laws 2005, LB 312, § 27; Laws 2012, LB1118, § 4; Laws 2022, LB1150, § 7.
Operative date January 1, 2023.

77-5723 Incentives; application; contents; fee; approval; when; agreements; contents; modification.

(1) In order to utilize the incentives set forth in the Nebraska Advantage Act, the taxpayer shall file an application, on a form developed by the Tax Commissioner, requesting an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with each other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of one thousand dollars for a tier 1 project, two thousand five hundred dollars for a tier 2, tier 3, or tier 5 project, five thousand dollars for a tier 4 project, and ten thousand dollars for a tier 6 project. The fee shall be credited to the Nebraska Incentives Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-5731 and 77-5734.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the Tax Commissioner's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1, tier 3, or tier 6 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application. For a tier 5 project that is sequential to a tier 2 large data center project, the required level of investment shall be met prior to the end of the fourth year after the expiration of the tier 2 large data center project entitlement period relating to sales tax exemptions.

(5) The Tax Commissioner shall make his or her determination to approve or not approve an application within one hundred eighty days after the date of the application. If the Tax Commissioner requests, by mail or by electronic means, additional information or clarification from the taxpayer in order to make his or her determination, such one-hundred-eighty-day period shall be tolled from the time the Tax Commissioner makes the request to the time he or she receives the requested information or clarification from the taxpayer. The taxpayer and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If the Tax Commissioner fails to make his or her determination within the prescribed one-hundred-eighty-day period, the application shall be deemed approved.

(6) Within one hundred eighty days after approval of the application, the Tax Commissioner shall prepare and mail a written agreement to the taxpayer for the taxpayer's signature. The taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and

the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(7) The incentives contained in section 77-5725 shall be in lieu of the tax credits allowed by the Nebraska Advantage Rural Development Act for any project. In computing credits under the act, any investment or employment which is eligible for benefits or used in determining benefits under the Nebraska Advantage Act shall be subtracted from the increases computed for determining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Employment and Investment Growth Act shall not be considered new investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act shall not preclude investment not eligible for the property tax exemption from being considered new investment under the Nebraska Advantage Act.

(8) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

(9) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. An agreement may not be modified to a tier that would grant a higher level of benefits to the taxpayer or to a tier 1 project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the Tax Commissioner and taxpayer may amend the agree-

ment. For a tier 6 project, the taxpayer must agree to limit the project to qualified activities allowable under tier 2 and tier 4.

Source: Laws 2005, LB 312, § 45; Laws 2006, LB 1003, § 13; Laws 2008, LB895, § 15; Laws 2008, LB914, § 22; Laws 2009, LB164, § 5; Laws 2012, LB1118, § 6; Laws 2013, LB34, § 6; Laws 2022, LB1150, § 8.
Operative date January 1, 2023.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Invest Nebraska Act, see section 77-5501.
Nebraska Advantage Rural Development Act, see section 77-27,187.
Quality Jobs Act, see section 77-4901.

77-5725 Tiers; requirements; incentives; enumerated; deadlines.

(1) Applicants may qualify for benefits under the Nebraska Advantage Act in one of six tiers:

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2020. All complete project applications filed on or before December 31, 2020, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2020. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, (i) investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (ii) for a large data center project, investment in qualified property for the data center of at least two hundred million dollars and the hiring for the data center of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2020. All complete project applications filed on or before December 31, 2020, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2020. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2020. All complete project applications filed on or before December 31, 2020, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2020. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(d) Tier 4, investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2020. All complete project applications filed on or before December 31, 2020, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2020. All project agree-

ments pending, approved, or entered into before such date shall continue in full force and effect;

(e) Tier 5, (i) investment in qualified property of at least thirty million dollars or (ii) for the production of electricity by using one or more sources of renewable energy to produce electricity for sale as described in subdivision (1)(j) of section 77-5715, investment in qualified property of at least twenty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits. There shall be no new project applications for benefits under this tier filed after December 31, 2020. All complete project applications filed on or before December 31, 2020, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2020. All project agreements pending, approved, or entered into before such date shall continue in full force and effect; and

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2020. All complete project applications filed on or before December 31, 2020, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2020. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

(2) When the taxpayer has met the required levels of employment and investment contained in the agreement for a tier 1, tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be entitled to the following incentives:

(a) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and 77-6403 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate when such property is incorporated into real estate as a part of a project. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax;

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is annexed to, but not incorporated into, real estate as a part of a project. The refund shall be based on the cost of materials subject to the sales and use tax that were annexed to real estate; and

(v) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is both (A) incorporated into real estate as a part of a project and (B) annexed to, but not incorporated into, real estate as a part of a project. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b)(i) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project, excluding the tier 2 and tier 5 projects described in subdivision (2)(b)(ii) of this section, or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and 77-6403 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment; or

(ii) An exemption from all sales and use taxes for a tier 2 large data center project or a tier 5 project that is sequential to a tier 2 large data center project imposed under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and 77-6403 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such purchases, including rentals, occurring during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment, except that the exemption shall be for the actual materials purchased with respect to subdivisions (2)(a)(iii), (iv), and (v) of this section. The Tax Commissioner shall issue such rules, regulations, certificates, and forms as are appropriate to implement the efficient use of this exemption.

(3) For agreements involving a tier 2 large data center project or a tier 5 project that is sequential to a tier 2 large data center project:

(a) Within sixty days after January 1, 2023, any taxpayer who meets the requirements of subsection (1) of section 77-2705.01 shall be issued a direct payment permit under section 77-2705.01, unless the taxpayer has opted out of this requirement. For any taxpayer who is issued a direct payment permit, until such taxpayer meets the required levels of employment and investment contained in the agreement, the taxpayer must pay and remit any applicable sales and use taxes as required by the Tax Commissioner. Any taxpayer who is issued a direct payment permit under this subdivision or who otherwise receives the benefit of any refunds or exemptions under this section shall comply with all data disclosure requirements in subsection (6) of section 77-27,144, including disclosures to a municipality which would have received sales and use taxes but for an exemption allowed under this section; and

(b) If the taxpayer meets the required levels of employment and investment contained in the agreement, the taxpayer shall receive the sales tax refunds described in subdivision (2)(a) of this section. For any year in which the taxpayer is not at the required levels of employment and investment, the taxpayer shall report all sales and use taxes owed for the period on the taxpayer's tax return.

(4) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average

wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

(a) Average annual wage means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year, divided by the number of equivalent employees making up such total compensation;

(b) Average wage of new employees means the average annual wage paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year; and

(c) Nebraska average annual wage means the Nebraska average weekly wage times fifty-two.

(5) Any taxpayer who qualifies for a tier 6 project shall be entitled to a credit equal to ten percent times the total compensation paid to all employees, other than base-year employees, excluding any compensation in excess of one million dollars paid to any one employee during the year, employed at the project.

(6) Any taxpayer who has met the required levels of employment and investment for a tier 2 or tier 4 project shall receive a credit equal to ten percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 1 project shall receive a credit equal to three percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 6 project shall receive a credit equal to fifteen percent of the investment made in qualified property at the project.

(7) The credits prescribed in subsections (4), (5), and (6) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

(8) The credit prescribed in subsection (6) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(9)(a) Property described in subdivisions (9)(c)(i) through (v) of this section used in connection with a project or projects, whether purchased or leased, and placed in service by the taxpayer after the date the application was filed shall constitute separate classes of property and are eligible for exemption under the

conditions and for the time periods provided in subdivision (9)(b) of this section.

(b)(i) A taxpayer who has met the required levels of employment and investment for a tier 4 project shall receive the exemption of property in subdivisions (9)(c)(ii), (iii), and (iv) of this section. A taxpayer who has met the required levels of employment and investment for a tier 6 project shall receive the exemption of property in subdivisions (9)(c)(ii), (iii), (iv), and (v) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year property included in subdivisions (9)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(ii) A taxpayer who has filed an application that describes a tier 2 large data center project or a project under tier 4 or tier 6 shall receive the exemption of property in subdivision (9)(c)(i) of this section beginning with the first January 1 following the date the property was placed in service. The exemption shall continue through the end of the period property included in subdivisions (9)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(iii) A taxpayer who has filed an application that describes a tier 2 large data center project or a tier 5 project that is sequential to a tier 2 large data center project for which the entitlement period has expired shall receive the exemption of all property in subdivision (9)(c) of this section beginning any January 1 after the date the property was placed in service. Such property shall be eligible for exemption from the tax on personal property from the January 1 preceding the first claim for exemption approved under this subdivision through the ninth December 31 after the year the first claim for exemption is approved.

(iv) A taxpayer who has a project for an Internet web portal or a data center and who has met the required levels of employment and investment for a tier 2 project or the required level of investment for a tier 5 project, taking into account only the employment and investment at the web portal or data center project, shall receive the exemption of property in subdivision (9)(c)(ii) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year any property included in subdivisions (9)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(v) Such investment and hiring of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

(c) The following property used in connection with such project or projects, whether purchased or leased, and placed in service by the taxpayer after the date the application was filed shall constitute separate classes of personal property:

(i) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(ii) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environ-

mental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computer systems. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers;

(iii) Depreciable personal property used for a distribution facility, including, but not limited to, storage racks, conveyor mechanisms, forklifts, and other property used to store or move products;

(iv) Personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products; and

(v) For a tier 2 large data center project or tier 6 project, any other personal property located at the project.

(d) In order to receive the property tax exemptions allowed by subdivision (9)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine whether a taxpayer is eligible to obtain exemption for personal property based on the criteria for exemption and the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor.

(10)(a) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection, except that the investment threshold for a tier 5 project described in subdivision (1)(e)(ii) of this section shall not be adjusted.

(b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier 5 projects described in subdivision (1)(e)(ii) of this section, beginning October 1, 2006, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006.

(c) For tier 6, beginning October 1, 2008, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2008 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2008.

(d) For a tier 2 large data center project, beginning October 1, 2012, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the

Producer Price Index for the first quarter of 2012 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2012.

(e) If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one million dollars.

(f) The investment thresholds established by this subsection apply for purposes of project qualifications for all applications filed on or after January 1 of the following year for all years of the project. Adjustments do not apply to projects after the year of application.

Source: Laws 2005, LB 312, § 47; Laws 2006, LB 1003, § 14; Laws 2007, LB223, § 30; Laws 2007, LB334, § 98; Laws 2008, LB895, § 16; Laws 2008, LB965, § 22; Laws 2009, LB164, § 6; Laws 2010, LB879, § 18; Laws 2010, LB918, § 4; Laws 2012, LB1118, § 7; Laws 2013, LB104, § 4; Laws 2014, LB1067, § 2; Laws 2015, LB538, § 13; Laws 2016, LB1022, § 9; Laws 2017, LB217, § 23; Laws 2019, LB472, § 16; Laws 2022, LB1150, § 9.
Operative date January 1, 2023.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-5726 Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.

(1)(a) The credits prescribed in section 77-5725 for a year shall be established by filing the forms required by the Tax Commissioner with the income tax return for the taxable year which includes the end of the year the credits were earned. The credits may be used and shall be applied in the order in which they were first allowed. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. Credits may be used beginning with the taxable year which includes December 31 of the year the required minimum levels were reached. The last year for which credits may be used is the taxable year which includes December 31 of the last year of the carryover period. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(b) The taxpayer may use the credit provided in subsection (4) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to the number of new employees at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year. The taxpayer may use the credit provided in subsection (5) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer of the credit shall not change the amount that otherwise would be reported by the taxpayer to the employee under section 77-2754 as income tax withheld and

shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

For a tier 1, tier 2, tier 3, or tier 4 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to new employees employed at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year.

For a tier 6 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year.

If the amount of credit used by the taxpayer against income tax withholding exceeds this amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section or shall carry over to the extent authorized in subdivision (1)(e) of this section.

(c) Credits may be used to obtain a refund of sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and 77-6403 which are not otherwise refundable that are paid on purchases, including rentals, for use at the project for a tier 1, tier 2, tier 3, or tier 4 project or for use within this state for a tier 2 large data center project or a tier 6 project.

(d) The credits earned for a tier 6 project may be used to obtain a payment from the state equal to the real property taxes due after the year the required levels of employment and investment were met and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. Once the required levels of employment and investment for a tier 2 large data center project have been met, the credits earned for a tier 2 large data center project may be used to obtain a payment from the state equal to the real property taxes due after the year of application and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. The payment from the state shall be made only after payment of the real property taxes have been made to the county as required by law. Payments shall not be allowed for any taxes paid on real property for which the taxes are divided under section 18-2147 or 58-507.

(e) Credits may be carried over until fully utilized, except that such credits may not be carried over more than nine years after the year of application for a tier 1 or tier 3 project, fourteen years after the year of application for a tier 2 or tier 4 project, or more than sixteen years past the end of the entitlement period for a tier 6 project.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the Nebraska Advantage Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Refund claims for materials purchased by a purchasing agent shall include:

(i) A copy of the purchasing agent appointment;

(ii) The contract price; and

(iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of section 77-5725, a certification by the contractor or repairperson of the percentage of the materials incorporated into or annexed to the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent; or

(B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a certification by the contractor or repairperson of the percentage of the contract price that represents the cost of materials annexed to the project and the percentage of the materials annexed to the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Nebraska Advantage Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) If a claim for a refund of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813, and 77-6403 of more than twenty-five thousand dollars is filed by June 15 of a given year, the refund shall be made on or after November 15 of the same year. If such a claim is filed on or after June 16 of a given year, the refund shall not be made until on or after November 15 of the following year. The Tax Commissioner shall notify the affected city, village, county, or municipal county of the amount of refund claims of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813, and 77-6403 that are in excess of twenty-five thousand dollars on or before July 1 of the year before the claims will be paid under this section.

(f) Interest shall not be allowed on any taxes refunded under the Nebraska Advantage Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into or annexed to the project and becomes the property of the owner of the improvement to real estate or the taxpayer. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the property.

(4) A determination that a taxpayer is not engaged in a qualified business or has failed to meet or maintain the required levels of employment or investment for incentives, exemptions, or recapture may be protested within sixty days after the mailing of the written notice of the proposed determination. If the notice of proposed determination is not protested within the sixty-day period, the proposed determination is a final determination. If the notice is protested, the Tax Commissioner shall issue a written order resolving such protests. The written order of the Tax Commissioner resolving a protest may be appealed to

the district court of Lancaster County within thirty days after the issuance of the order.

Source: Laws 2005, LB 312, § 48; Laws 2008, LB895, § 17; Laws 2008, LB914, § 23; Laws 2009, LB164, § 7; Laws 2010, LB879, § 19; Laws 2012, LB1118, § 8; Laws 2013, LB34, § 7; Laws 2017, LB161, § 1; Laws 2019, LB472, § 17; Laws 2022, LB1150, § 10. Operative date January 1, 2023.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-5727 Recapture or disallowance of incentives.

(1)(a) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the fourth year after the end of the year the application was submitted for a tier 1, tier 3, or tier 6 project or by the end of the sixth year after the end of the year the application was submitted for a tier 2, tier 4, or tier 5 project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Nebraska Advantage Act shall be recaptured or disallowed.

(b) In the case of a taxpayer who has failed to meet the required levels of investment or employment within the required time period, all reduction in the personal property tax because of the act shall be recaptured.

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax or exemptions from tax allowed under subsection (2) of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. The amount of the recapture shall be a percentage equal to the number of years the taxpayer did not maintain the project at or above the required levels of investment and employment divided by the number of years of the project's entitlement period multiplied by the refunds and exemptions allowed, reduction in personal property tax, the credits used, and the remaining carryovers. In addition, the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project at the end of the six years following the year the taxpayer attained the required amount of investment, any refunds or exemptions in tax allowed under subsection (2) of section 77-5725 or any reduction in the personal property tax under section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture shall be the total amount of refunds, exemptions, and reductions in tax allowed for all years times the reduction in the average number of equivalent employees employed at the end of the entitlement period from the number of equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. For purposes of this subsection, the

average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.

(4) If the taxpayer receives any refund, exemption, or reduction in tax to which the taxpayer was not entitled or which was in excess of the amount to which the taxpayer was entitled, the refund, exemption, or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any amount recaptured under this subsection shall be excluded from the amounts subject to recapture under other subsections of this section.

(5) Any refund, exemption, or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(6)(a) Except as provided in subdivision (6)(b) of this section, any personal property tax that would have been due except for the exemption allowed under the Nebraska Advantage Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted.

(b) For a tier 2 large data center project, any personal property tax that would have been due except for the exemption under the Nebraska Advantage Act, together with interest at the rate provided in section 45-104.01 from the original delinquency date of the tax that would have been due until the date paid, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately payable to the county or counties in which the property was located when exempted.

(c) All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(7) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the entitlement period.

(8) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage Act unless the recapture was in error.

(9) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Source: Laws 2005, LB 312, § 49; Laws 2006, LB 1003, § 15; Laws 2008, LB895, § 18; Laws 2009, LB164, § 8; Laws 2012, LB1118, § 9; Laws 2022, LB1150, § 11.
Operative date January 1, 2023.

77-5731 Reports; content; joint hearing.

(1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than October 31 of each year. The report shall be on a

fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Revenue shall, on or before December 15 of each even-numbered year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) The report shall list (a) the agreements which have been signed during the previous year, (b) the agreements which are still in effect, (c) the identity of each taxpayer who is party to an agreement, and (d) the location of each project.

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the Nebraska Advantage Act, (b) the refunds and exemptions allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the credits used against withholding liability, (g) the number of jobs created under the act, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created under the act subsequent to the application date, (j) the total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed, (m) the credits outstanding under the act, (n) the value of personal property exempted by class in each county under the act, (o) the value of property for which payments equal to property taxes paid were allowed in each county, and (p) the total amount of the payments.

(4) In estimating the projected future state revenue gains and losses, the report shall detail the methodology utilized, state the economic multipliers and industry multipliers used to determine the amount of economic growth and positive tax revenue, describe the analysis used to determine the percentage of new jobs attributable to the Nebraska Advantage Act assumption, and identify limitations that are inherent in the analysis method.

(5) The report shall provide an explanation of the audit and review processes of the department in approving and rejecting applications or the grant of incentives and in enforcing incentive recapture. The report shall also specify the median period of time between the date of application and the date the agreement is executed for all agreements executed by June 30 of the current year.

(6) The report shall provide information on project-specific total incentives used every two years for each approved project. The report shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used, exemptions used, and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used, exemptions used, and refunds approved. The incentives used shall include incentives which have been

approved by the department, but not necessarily received, during the previous two years.

(7) The report shall include an executive summary which shows aggregate information for all projects for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for projects detailed in subsection (6) of this section during the previous two years; (b) the number of projects; (c) the new jobs at the project for which credits have been granted; (d) the average compensation paid employees in the state in the year of application and for the new jobs at the project; and (e) the total investment for which incentives were granted. The executive summary shall summarize the number of states which grant investment tax credits, job tax credits, sales and use tax refunds or exemptions for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

(8) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 53; Laws 2008, LB895, § 19; Laws 2012, LB782, § 146; Laws 2013, LB34, § 9; Laws 2013, LB612, § 7; Laws 2022, LB1150, § 12.
Operative date April 20, 2022.

77-5735 Changes to sections; when effective; applicability.

(1) The changes made in sections 77-5703, 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to all applications filed on and after April 18, 2008. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(2) The changes made in sections 77-5725 and 77-5726 by Laws 2010, LB879, apply to all applications filed on or after July 15, 2010. For all applications filed prior to such date, the taxpayer may make a one-time election, within the time period prescribed by the Tax Commissioner, to have the changes made in sections 77-5725 and 77-5726 by Laws 2010, LB879, apply to such taxpayer's application, or in the absence of such an election, the provisions of the Nebraska Advantage Act as they existed immediately prior to July 15, 2010, apply to such application.

(3) The changes made in sections 77-5707, 77-5715, 77-5719, and 77-5725 by Laws 2010, LB918, apply to all applications filed on or after July 15, 2010. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715, 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all applications filed on or after March 8, 2012. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(5) The changes made in sections 77-5707.01, 77-5709, 77-5712, 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all applications filed on or after September 6, 2013. For all applications filed prior to such date,

the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(6) The changes made in section 77-5726 by Laws 2017, LB161, apply to all applications filed before, on, or after August 24, 2017.

(7) The changes made in sections 77-5705, 77-5723, 77-5725, 77-5726, and 77-5727 and in subsections (3), (6), and (7) of section 77-5731 by Laws 2022, LB1150, apply to any agreement entered into under the Nebraska Advantage Act that is still active on January 1, 2023, if the taxpayer makes a one-time election, within the time period prescribed by the Tax Commissioner, to have such changes apply to such taxpayer's agreement. In the absence of such an election, the provisions of such sections and subsections as they existed immediately prior to January 1, 2023, shall apply to such agreement. For each election made under this subsection, the Tax Commissioner shall disclose such election, the identity of the taxpayer, and the location of the taxpayer's project to each municipality in which the project is located. The Tax Commissioner shall make such disclosures within thirty days after the election.

Source: Laws 2008, LB895, § 20; Laws 2010, LB879, § 20; Laws 2010, LB918, § 5; Laws 2012, LB1118, § 10; Laws 2013, LB34, § 11; Laws 2014, LB851, § 15; Laws 2017, LB161, § 2; Laws 2022, LB1150, § 13.
Operative date January 1, 2023.

ARTICLE 58

NEBRASKA ADVANTAGE RESEARCH AND DEVELOPMENT ACT

Section
77-5807. Report; contents; joint hearing.

77-5807 Report; contents; joint hearing.

No later than October 31 of each year, the Tax Commissioner shall prepare a report stating the total amount of credits claimed on income tax returns or as refunds of sales and use tax during the previous fiscal year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Revenue shall, on or before December 15 of each even-numbered year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request. No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 65; Laws 2013, LB612, § 8; Laws 2022, LB1150, § 14.
Operative date April 20, 2022.

ARTICLE 59

NEBRASKA ADVANTAGE MICROENTERPRISE TAX CREDIT ACT

Section
77-5903. Terms, defined.
77-5905. Applications; approval; limit.
77-5906. Tax credit; amount; claim; expiration; interest.
77-5907. Report; contents; joint hearing.

77-5903 Terms, defined.

For purposes of the Nebraska Advantage Microenterprise Tax Credit Act:

(1) Actively engaged in the operation of a microbusiness means personal involvement on a continuous basis in the daily management and operation of the business;

(2) Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(3) Microbusiness means any business employing five or fewer equivalent employees at the time of application. Microbusiness does not include a farm or livestock operation unless (a) the person actively engaged in the operation of the microbusiness has a net worth of not more than five hundred thousand dollars, including any holdings by a spouse or dependent, based on fair market value, or (b) the investment or employment is in the processing or marketing of agricultural products, aquaculture, agricultural tourism, or the production of fruits, herbs, tree products, vegetables, tree nuts, dried fruits, organic crops, or nursery crops;

(4) New employment means the amount by which the total compensation plus the employer cost for health insurance for employees paid during the tax year to or for employees who are Nebraska residents exceeds the total compensation paid plus the employer cost for health insurance for employees to or for employees who are Nebraska residents in the tax year prior to application. New employment does not include compensation to any employee that is in excess of one hundred fifty percent of the Nebraska average weekly wage. Nebraska average weekly wage means the most recent average weekly wage paid by all employers as reported by October 1 by the Department of Labor;

(5) New investment means the increase during the tax year over the year prior to the application in the applicant's (a) purchases of buildings and depreciable personal property located in Nebraska, (b) expenditures on repairs and maintenance on property located in Nebraska, neither subdivision (a) or (b) of this subdivision to include vehicles required to be registered for operation on the roads and highways of this state, and (c) expenditures on advertising, legal, and professional services. If the buildings or depreciable personal property is leased, the amount of new investment shall be the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not to exceed ten years;

(6) Related persons means (a) any corporation, partnership, limited liability company, cooperative, including cooperatives exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture which is or would otherwise be a member of the same unitary group, if incorporated, (b) an individual and a corporation if more than fifty percent in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for such individual, (c) a fiduciary of a trust and a corporation if more than fifty percent in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust, (d) a corporation and a partnership if the same persons own (i) more than fifty percent in value of the outstanding stock of the corporation and (ii) more than fifty percent of the capital interest, or the profits interest, in the partnership, (e) a subchapter S corporation and another

subchapter S corporation if the same persons own more than fifty percent in value of the outstanding stock of each corporation, (f) a subchapter S corporation and a C corporation if the same persons own more than fifty percent in value of the outstanding stock of each corporation, (g) a partnership and a person owning, directly or indirectly, more than fifty percent of the capital interest, or the profits interest, in such partnership, (h) two partnerships in which the same persons own, directly or indirectly, more than fifty percent of the capital interests or profits interests, and (i) any individual who is a parent, if the taxpayer is a minor, or minor son or daughter of the taxpayer; and

(7) Taxpayer means any person subject to the income tax imposed by the Nebraska Revenue Act of 1967, any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such tax, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such tax.

The changes made to this section by Laws 2008, LB 177, shall be operative for all applications for benefits received on or after July 18, 2008.

The changes made to this section by Laws 2021, LB366, shall apply to all applications for benefits received on or after August 28, 2021.

Source: Laws 2005, LB 312, § 68; Laws 2006, LB 1003, § 17; Laws 2007, LB368, § 141; Laws 2008, LB177, § 1; Laws 2009, LB531, § 1; Laws 2015, LB246, § 1; Laws 2017, LB217, § 25; Laws 2021, LB366, § 1.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5905 Applications; approval; limit.

(1) If the Department of Revenue determines that an application meets the requirements of section 77-5904 and that the investment or employment is eligible for the credit and (a) the applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation upon its establishment, (b) the applicant will make new investment or employment in the microbusiness, and (c) the new investment or employment will create new income or jobs, the department shall approve the application and authorize tentative tax credits to the applicant within the limits set forth in this section and certify the amount of tentative tax credits approved for the applicant. Applications for tax credits shall be considered in the order in which they are received.

(2) The department may approve applications up to the adjusted limit for each calendar year beginning January 1, 2006, through December 31, 2032. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. The adjusted limit in a given year is two million dollars plus tentative tax credits that were not

granted by the end of the preceding year. Tax credits shall not be allowed for a taxpayer receiving benefits under the Employment and Investment Growth Act, the Nebraska Advantage Act, the Nebraska Advantage Rural Development Act, the ImagiNE Nebraska Act, or the Urban Redevelopment Act.

Source: Laws 2005, LB 312, § 70; Laws 2009, LB164, § 11; Laws 2014, LB1067, § 4; Laws 2015, LB538, § 15; Laws 2016, LB1022, § 11; Laws 2017, LB217, § 27; Laws 2020, LB1107, § 138; Laws 2021, LB366, § 2; Laws 2021, LB544, § 34.

Cross References

Employment and Investment Growth Act, see section 77-4101.
ImagiNE Nebraska Act, see section 77-6801.
Nebraska Advantage Act, see section 77-5701.
Nebraska Advantage Rural Development Act, see section 77-27,187.
Urban Redevelopment Act, see section 77-6901.

77-5906 Tax credit; amount; claim; expiration; interest.

(1) Taxpayers shall be entitled to refundable tax credits for the taxpayer's new investment or new employment in the microbusiness during the tax year. The tax credits shall be equal to:

(a) Twenty percent of the taxpayer's new investment; and

(b) Twenty percent of the taxpayer's new employment.

(2) The total amount of tax credits shall not exceed the amount of tentative tax credits approved by the department under section 77-5905.

(3) The taxpayer shall claim the tax credit by filing a form developed by the Tax Commissioner and attaching the tentative tax credit certification granted by the department. Tentative tax credits expire after the end of the tax year following the year the tentative tax credit was certified.

(4) The total lifetime tax credits claimed by any one taxpayer and any related person under the Nebraska Advantage Microenterprise Tax Credit Act shall be limited to twenty thousand dollars.

(5) Interest shall not be allowed on any taxes refunded under the act.

(6) The changes made to this section by Laws 2021, LB366, shall apply to all applications for benefits received on or after August 28, 2021.

Source: Laws 2005, LB 312, § 71; Laws 2009, LB164, § 12; Laws 2021, LB366, § 3.

77-5907 Report; contents; joint hearing.

(1) The Tax Commissioner shall prepare a report identifying the following aggregate amounts for the previous fiscal year: (a) The amount of projected employment and investment anticipated by taxpayers receiving tentative tax credits and the tentative tax credits granted; (b) the actual amount of employment and investment made by taxpayers that were granted tentative tax credits in the previous fiscal year; (c) the tax credits used; and (d) the tentative tax credits that expired. The report shall be issued on or before October 31 of each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Revenue shall, on or before December 15 of each even-numbered year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any

supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) Beginning with applications filed on or after August 28, 2021, the report shall provide information on project-specific total credits used every two years for each approved application and shall disclose (a) the identity of the taxpayer, (b) the location or locations where the taxpayer is earning credits, (c) the new investment or new employment that was actually produced by the taxpayer to earn credits, and (d) the total credits used during the immediately preceding two years, expressed as a single, aggregated total.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 72; Laws 2013, LB612, § 9; Laws 2021, LB366, § 4; Laws 2022, LB1150, § 15.
Operative date April 20, 2022.

ARTICLE 62

NAMEPLATE CAPACITY TAX

Section
77-6202. Terms, defined.
77-6203. Nameplate capacity tax; annual payment; exemptions; Department of Revenue; duties; owner; file report; interest; penalties.

77-6202 Terms, defined.

For purposes of sections 77-6201 to 77-6204:

(1) Commissioned means the renewable energy generation facility has been in commercial operation for at least twenty-four hours. A renewable energy generation facility is not in commercial operation unless the renewable energy generation facility is connected to the electrical grid or to the end user if the renewable energy generation facility is a customer-generator as defined in section 70-2002;

(2) Nameplate capacity means the capacity of a renewable energy generation facility to generate electricity as measured in megawatts, including fractions of a megawatt. Nameplate capacity shall be determined based on the facility's alternating current capacity; and

(3) Renewable energy generation facility means (a) a facility that generates electricity using wind as the fuel source or (b) a facility that generates electricity using solar, biomass, or landfill gas as the fuel source if such facility was installed on or after January 1, 2016, and has a nameplate capacity of one hundred kilowatts or more.

Source: Laws 2010, LB1048, § 13; Laws 2015, LB424, § 5; Laws 2020, LB76, § 1.

77-6203 Nameplate capacity tax; annual payment; exemptions; Department of Revenue; duties; owner; file report; interest; penalties.

(1) The owner of a renewable energy generation facility annually shall pay a nameplate capacity tax equal to the total nameplate capacity of the commissioned renewable energy generation facility multiplied by a tax rate of three thousand five hundred eighteen dollars per megawatt.

(2) No tax shall be imposed on a renewable energy generation facility:

(a) Owned or operated by the federal government, the State of Nebraska, a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative; or

(b) That is a customer-generator as defined in section 70-2002.

(3) No tax levied pursuant to this section shall be construed to constitute restricted funds as defined in section 13-518 for the first five years after the renewable energy generation facility is commissioned.

(4) The presence of one or more renewable energy generation facilities or supporting infrastructure shall not be a factor in the assessment, determination of actual value, or classification under section 77-201 of the real property underlying or adjacent to such facilities or infrastructure.

(5)(a) The Department of Revenue shall collect the tax due under this section.

(b) The tax shall be imposed beginning the first calendar year the renewable energy generation facility is commissioned. A renewable energy generation facility that uses wind as the fuel source which was commissioned prior to July 15, 2010, shall be subject to the tax levied pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The amount of property tax on depreciable tangible personal property previously paid on a renewable energy generation facility that uses wind as the fuel source which was commissioned prior to July 15, 2010, which is greater than the amount that would have been paid pursuant to sections 77-6201 to 77-6204 from the date of commissioning until January 1, 2010, shall be credited against any tax due under Chapter 77, and any amount so credited that is unused in any tax year shall be carried over to subsequent tax years until fully utilized.

(c)(i) The tax for the first calendar year shall be prorated based upon the number of days remaining in the calendar year after the renewable energy generation facility is commissioned.

(ii) In the first year in which a renewable energy generation facility is taxed or in any year in which additional commissioned nameplate capacity is added to a renewable energy generation facility, the taxes on the initial or additional nameplate capacity shall be prorated for the number of days remaining in the calendar year.

(iii) When a renewable energy generation facility is decommissioned or made nonoperational by a change in law during a tax year, the taxes shall be prorated for the number of days during which the renewable energy generation facility was not decommissioned or was operational.

(iv) When the capacity of a renewable energy generation facility to produce electricity is reduced but the renewable energy generation facility is not decommissioned, the nameplate capacity of the renewable energy generation facility is deemed to be unchanged.

(6)(a) On March 1 of each year, the owner of a renewable energy generation facility shall file with the Department of Revenue a report on the nameplate capacity of the facility for the previous year from January 1 through December 31. All taxes shall be due on April 1 and shall be delinquent if not paid on a quarterly basis on April 1 and each quarter thereafter. Delinquent quarterly payments shall draw interest at the rate provided for in section 45-104.02, as such rate may from time to time be adjusted.

(b) The owner of a renewable energy generation facility is liable for the taxes under this section with respect to the facility, whether or not the owner of the facility is the owner of the land on which the facility is situated.

(7) Failure to file a report required by subsection (6) of this section, filing such report late, failure to pay taxes due, or underpayment of such taxes shall result in a penalty of five percent of the amount due being imposed for each quarter the report is overdue or the payment is delinquent, except that the penalty shall not exceed ten thousand dollars.

(8) The Department of Revenue shall enforce the provisions of this section. The department may adopt and promulgate rules and regulations necessary for the implementation and enforcement of this section.

(9) The Department of Revenue shall separately identify the proceeds from the tax imposed by this section and shall pay all such proceeds over to the county treasurer of the county where the renewable energy generation facility is located within thirty days after receipt of such proceeds.

Source: Laws 2010, LB1048, § 14; Laws 2011, LB360, § 4; Laws 2015, LB424, § 6; Laws 2016, LB824, § 14; Laws 2019, LB512, § 29.

ARTICLE 63

ANGEL INVESTMENT TAX CREDIT ACT

Section
77-6306. Tax credit; amount; director; allocation; limitation; reallocation; when; notice to director; tax credit certificates issued; holding period.

77-6306 Tax credit; amount; director; allocation; limitation; reallocation; when; notice to director; tax credit certificates issued; holding period.

(1) A qualified investor or qualified fund is eligible for a refundable tax credit equal to forty percent of its qualified investment in a qualified small business. The director shall not allocate more than four million dollars in tax credits to all qualified investors or qualified funds in a calendar year, except that for calendar year 2019, the director shall not allocate more than three million nine hundred thousand dollars in tax credits in such calendar year. If the director does not allocate the entire amount of tax credits authorized for a calendar year, the tax credits that are not allocated shall not carry forward to subsequent years. The director shall not allocate any amount for tax credits for calendar years after 2019.

(2) The director shall not allocate more than a total maximum amount in tax credits for a calendar year to a qualified investor for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a qualified fund as provided in this subsection. For married couples filing joint returns the maximum is three hundred fifty thousand dollars, and for all other filers the maximum is three hundred thousand dollars. The director shall not allocate more than a total of one million dollars in tax credits for qualified investments in any one qualified small business.

(3) The director shall not allocate a tax credit to a qualified investor either as an individual qualified investor or as an investor in a qualified fund if the investor receives more than forty-nine percent of the investor's gross annual income from the qualified small business in which the qualified investment is proposed. A family member of an individual disqualified by this subsection is not eligible for a tax credit under this section. For a married couple filing a

joint return, the limitations in this subsection apply collectively to the investor and spouse. For purposes of determining the ownership interest of an investor under this subsection, the rules under section 267(c) and (e) of the Internal Revenue Code of 1986, as amended, apply.

(4) Tax credits shall be allocated to qualified investors or qualified funds in the order that the tax credit applications are filed with the director. Once tax credits have been approved and allocated by the director, the qualified investors and qualified funds shall implement the qualified investment specified within ninety days after allocation of the tax credits. Qualified investors and qualified funds shall notify the director no later than thirty days after the expiration of the ninety-day period that the qualified investment has been made. If the qualified investment is not made within ninety days after allocation of the tax credits, or the director has not, within thirty days following expiration of the ninety-day period, received notification that the qualified investment was made, the tax credit allocation is canceled and available for reallocation. A qualified investor or qualified fund that fails to invest as specified in the application within ninety days after allocation of the tax credits shall notify the director of the failure to invest within five business days after the expiration of the ninety-day investment period.

(5) All tax credit applications filed with the director on the same day shall be treated as having been filed contemporaneously. If two or more qualified investors or qualified funds file tax credit applications on the same day and the aggregate amount of tax credit allocation requests exceeds the aggregate limit of tax credits under this section or the lesser amount of tax credits that remain unallocated on that day, then the tax credits shall be allocated among the qualified investors or qualified funds who filed on that day on a pro rata basis with respect to the amounts requested. The pro rata allocation for any one qualified investor or qualified fund shall be the product obtained by multiplying a fraction, the numerator of which is the amount of the tax credit allocation request filed on behalf of a qualified investor or qualified fund and the denominator of which is the total of all tax credit allocation requests filed on behalf of all applicants on that day, by the amount of tax credits that remain unallocated on that day for the taxable year.

(6) A qualified investor or qualified fund, or a qualified small business acting on behalf of the investor or fund, shall notify the director when an investment for which tax credits were allocated has been made and shall furnish the director with documentation of the investment date. A qualified fund shall also provide the director with a statement indicating the amount invested by each investor in the qualified fund based on each investor's share of the assets of the qualified fund at the time of the qualified investment. After receiving notification that the qualified investment was made, the director shall issue tax credit certificates for the taxable year in which the qualified investment was made to the qualified investor or, for a qualified investment made by a qualified fund, to each qualified investor who is an investor in the fund. The certificate shall state that the tax credit is subject to revocation if the qualified investor or qualified fund does not hold the investment in the qualified small business for at least three years, consisting of the calendar year in which the investment was made and the two following calendar years. The three-year holding period does not apply if:

(a) The qualified investment by the qualified investor or qualified fund becomes worthless before the end of the three-year period;

(b) Eighty percent or more of the assets of the qualified small business are sold before the end of the three-year period;

(c) The qualified small business is sold or merges with another business before the end of the three-year period;

(d) The qualified small business's common stock begins trading on a public exchange before the end of the three-year period; or

(e) In the case of an individual qualified investor, such investor becomes deceased before the end of the three-year period.

(7) The director shall notify the Tax Commissioner that tax credit certificates have been issued, including the amount of tax credits and all other pertinent tax information.

Source: Laws 2011, LB389, § 6; Laws 2014, LB1067, § 8; Laws 2015, LB156, § 1; Laws 2016, LB1022, § 12; Laws 2017, LB217, § 29; Laws 2019, LB334, § 6.

ARTICLE 64

QUALIFIED JUDGMENT PAYMENT ACT

Section
77-6401. Act, how cited.
77-6402. Qualified judgment, defined.
77-6403. Imposition of sales and use tax; procedure; Tax Commissioner; duties.
77-6404. Imposition of sales and use tax; limitation.
77-6405. Property tax levy; required.
77-6406. Act, termination.

77-6401 Act, how cited.

Sections 77-6401 to 77-6406 shall be known and may be cited as the Qualified Judgment Payment Act.

Source: Laws 2019, LB472, § 1.
Termination date January 1, 2027.

77-6402 Qualified judgment, defined.

For purposes of the Qualified Judgment Payment Act, qualified judgment means a judgment that is rendered against a county by a federal court for a violation of federal law.

Source: Laws 2019, LB472, § 2.
Termination date January 1, 2027.

77-6403 Imposition of sales and use tax; procedure; Tax Commissioner; duties.

(1) Any county that has a qualified judgment in excess of twenty-five million dollars rendered against it may, upon adoption of a resolution by the affirmative vote of at least a two-thirds majority of all elected members of the county board, impose a sales and use tax of one-half of one percent on transactions that are subject to the state sales and use tax under the Nebraska Revenue Act of 1967, as amended from time to time, and that are sourced as provided in sections 77-2703.01 to 77-2703.04 within the county. Any sales and use tax imposed pursuant to this section shall be used to pay the qualified judgment.

(2) The Tax Commissioner shall administer all sales and use taxes imposed pursuant to this section. The Tax Commissioner may prescribe forms and adopt and promulgate rules and regulations in conformity with the Nebraska Revenue Act of 1967, as amended, for the making of returns and for the ascertainment, assessment, and collection of taxes. The county shall furnish a certified copy of the resolution imposing the tax to the Tax Commissioner. The tax shall begin on the first day of the first calendar quarter which begins at least sixty days after receipt by the Tax Commissioner of the certified copy of the resolution. The Tax Commissioner shall provide at least thirty days' notice of the adoption of the tax to retailers within the county. Such notice may be provided through the website of the Department of Revenue or by other electronic means.

(3) Any sales and use tax imposed pursuant to this section shall terminate on the first day of the first calendar quarter which begins after the qualified judgment has been paid in full or after seven years, whichever is earlier. The county shall notify the Tax Commissioner of the anticipated termination date at least one hundred twenty days in advance. The Tax Commissioner shall provide at least sixty days' notice of the termination date to retailers within the county. Such notice may be provided through the website of the Department of Revenue or by other electronic means.

(4) The Tax Commissioner shall collect any sales and use tax imposed pursuant to this section concurrently with collection of a state sales and use tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the county imposing the tax, after deducting the amount of refunds made and three percent of the remainder as an administrative fee necessary to defray the cost of collecting the tax and the expenses incident thereto. The Tax Commissioner shall keep full and accurate records of all money received and distributed. All receipts from the three-percent administrative fee shall be deposited in the state General Fund.

(5) Upon any claim of illegal assessment and collection of any sales and use tax imposed pursuant to this section, the taxpayer has the same remedies provided for claims of illegal assessment and collection of the state sales and use tax.

(6) All relevant provisions of the Nebraska Revenue Act of 1967, as amended, not inconsistent with this section, shall govern transactions, proceedings, and activities related to any sales and use tax imposed pursuant to this section.

(7) For purposes of any sales and use tax imposed pursuant to this section, all retail sales, rentals, and leases, as defined and described in the Nebraska Revenue Act of 1967, shall be sourced as provided in sections 77-2703.01 to 77-2703.04.

Source: Laws 2019, LB472, § 3.
Termination date January 1, 2027.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-6404 Imposition of sales and use tax; limitation.

A county shall not impose a sales and use tax pursuant to the Qualified Judgment Payment Act if such county is imposing a tax pursuant to section 13-319.

Source: Laws 2019, LB472, § 4.
Termination date January 1, 2027.

77-6405 Property tax levy; required.

Any county that imposes a sales and use tax pursuant to the Qualified Judgment Payment Act shall set its property tax levy at the maximum levy authorized in section 77-3442 for each year that the county is imposing such sales and use tax. The county shall use any available revenue from the imposition of such levy to pay the qualified judgment.

Source: Laws 2019, LB472, § 5.
Termination date January 1, 2027.

77-6406 Act, termination.

The Qualified Judgment Payment Act terminates on January 1, 2027.

Source: Laws 2019, LB472, § 6.

ARTICLE 65

KEY EMPLOYER AND JOBS RETENTION ACT

Section
77-6501. Act, how cited.
77-6502. Purpose of act.
77-6503. Definitions, where found.
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77-6505. Base year, defined.
77-6506. Base-year employees, defined.
77-6507. Change in ownership and control, defined.
77-6508. Equivalent employees, defined.
77-6509. Key employer, defined.
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77-6511. Performance period, defined.
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77-6513. Taxpayer, defined.
77-6514. Wage retention credit, defined.
77-6515. Year, defined.
77-6516. Wage retention credit; amount; use.
77-6517. Wage retention credit; application; fee; confidentiality; approval of application; conditions; notice; agreement.
77-6518. Wage retention credit; recapture or disallowance; interest; penalties.
77-6519. Wage retention credit; transferable; when; effect.
77-6520. Rules and regulations.
77-6521. Reports; joint hearing.
77-6522. Application; valid; when; director; Tax Commissioner; powers and duties.
77-6523. Applications; deadline.

77-6501 Act, how cited.

Sections 77-6501 to 77-6523 shall be known and may be cited as the Key Employer and Jobs Retention Act.

Source: Laws 2020, LB1107, § 44.

77-6502 Purpose of act.

The purpose of the Key Employer and Jobs Retention Act is to provide incentives to encourage key employers to remain in the state and retain well-paid employees in the state when there is a change in ownership and control of the key employer and the new owners are considering moving some or all of the key employer's jobs to other states.

Source: Laws 2020, LB1107, § 45.

77-6503 Definitions, where found.

For purposes of the Key Employer and Jobs Retention Act, the definitions found in sections 77-6504 to 77-6515 shall be used.

Source: Laws 2020, LB1107, § 46.

77-6504 Additional definitions.

Any term defined in the Nebraska Revenue Act of 1967 or in the ImagiNE Nebraska Act has the same meaning in the Key Employer and Jobs Retention Act unless the context or the express language of the Key Employer and Jobs Retention Act requires a different meaning.

Source: Laws 2020, LB1107, § 47.

Cross References

ImagiNE Nebraska Act, see section 77-6801.
Nebraska Revenue Act of 1967, see section 77-2701.

77-6505 Base year, defined.

Base year means the year immediately preceding the year during which the change in ownership and control occurred.

Source: Laws 2020, LB1107, § 48.

77-6506 Base-year employees, defined.

Base-year employees means the number of equivalent employees employed by the taxpayer during the base year in Nebraska who (1) are paid wages at a rate equal to at least one hundred percent of the Nebraska statewide average hourly wage for the year of application and (2) receive a sufficient package of benefits as specified in the ImagiNE Nebraska Act.

Source: Laws 2020, LB1107, § 49.

Cross References

ImagiNE Nebraska Act, see section 77-6801.

77-6507 Change in ownership and control, defined.

Change in ownership and control has the same meaning as described in 34 C.F.R. 600.31, which shall mean the regulation as amended on November 1, 2019, and which took effect on July 1, 2020.

Source: Laws 2020, LB1107, § 50.

77-6508 Equivalent employees, defined.

Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year. A salaried employee who receives a predetermined amount of compensation each pay period on a weekly or less frequent basis is deemed to have been paid for forty hours per week during the pay period.

Source: Laws 2020, LB1107, § 51.

77-6509 Key employer, defined.

Key employer means a taxpayer that:

(1) Employs at least one thousand equivalent employees in Nebraska during the base year;

(2) Offers all full-time employees, as defined and described in section 4980H of the Internal Revenue Code of 1986, as amended, the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, as those terms are defined and described in section 5000A of the Internal Revenue Code of 1986, as amended;

(3) Offers all full-time employees, as defined and described in section 4980H of the Internal Revenue Code of 1986, as amended, a sufficient package of benefits as specified in the ImagiNE Nebraska Act;

(4) Enforces a company policy against any discrimination that is prohibited by federal or state law;

(5) Electronically verifies the work eligibility status of all new employees employed in Nebraska within ninety days after the date of hire during the entire performance period;

(6) Has gone through a change in ownership and control within the twenty-four months immediately prior to the application;

(7) Is at risk of moving more than one thousand existing equivalent employees from the state, as determined by the director;

(8) Retains at least ninety percent of its equivalent base-year employment; and

(9) Is a qualified business.

Source: Laws 2020, LB1107, § 52.

Cross References

ImagiNE Nebraska Act, see section 77-6801.

77-6510 Nebraska statewide average hourly wage for any year, defined.

Nebraska statewide average hourly wage for any year means the most recent statewide average hourly wage paid by all employers in all counties in Nebraska as calculated by the Office of Labor Market Information of the Department of Labor using annual data from the Quarterly Census of Employment and Wages by October 1 of the year prior to application. Hourly wages shall be calculated by dividing the reported average annual weekly wage by forty.

Source: Laws 2020, LB1107, § 53.

77-6511 Performance period, defined.

Performance period means the year of application plus the next nine years.

Source: Laws 2020, LB1107, § 54.

77-6512 Qualified business, defined.

Qualified business means any business if the majority of the business activities conducted throughout Nebraska by such business meet the requirements for a qualified location as defined in subsection (1) or (2) of section 77-6818. For purposes of this section, the majority of business activities conducted shall

be determined based on the number of equivalent employees working in the respective business activities.

Source: Laws 2020, LB1107, § 55.

77-6513 Taxpayer, defined.

Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any entity that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes and such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended. For purposes of this section, political subdivision includes any public corporation created for the benefit of a political subdivision and any group of political subdivisions forming a joint public agency, organized by interlocal agreement, or utilizing any other method of joint action.

Source: Laws 2020, LB1107, § 56.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-6514 Wage retention credit, defined.

Wage retention credit means the credit described in the Key Employer and Jobs Retention Act.

Source: Laws 2020, LB1107, § 57.

77-6515 Year, defined.

Year means calendar year.

Source: Laws 2020, LB1107, § 58.

77-6516 Wage retention credit; amount; use.

(1) If a key employer has entered into an agreement with the state pursuant to section 77-6517, the key employer shall during each year of the performance period receive the wage retention credit approved by the director in the manner provided in the Key Employer and Jobs Retention Act.

(2) The wage retention credit shall equal five percent of the total compensation paid by the key employer in the year to all retained employees of the key employer in Nebraska who are paid wages for services rendered at a rate equal to at least one hundred percent of the Nebraska statewide average hourly wage for the year of application. The wage retention credit earned for all qualified key employers shall not exceed four million dollars in any year. If two or more key employers qualify for benefits in any given year, the one with the earlier approval will be fully funded first.

(3) The wage retention credits shall be allowed for each year in the performance period. Unused credits may carry over only to the end of the performance period.

(4) The total amount all key employers may receive in credits pursuant to the Key Employer and Jobs Retention Act shall not exceed forty million dollars. If two or more key employers qualify for benefits, the one with the earlier

approval will be fully funded first. This benefit is in addition to any benefits the key employer may otherwise qualify for under the ImagiNE Nebraska Act or may have qualified for previously under the Nebraska Advantage Act or the Employment and Investment Growth Act.

(5) The wage retention credit shall be claimed by filing the forms required by the Tax Commissioner with the income tax return for the taxable year which includes the end of the year the credits were earned. The credits may be used after any other nonrefundable credits to reduce the key employer's income tax liability imposed by sections 77-2714 to 77-27,135. Credits may be used beginning with the taxable year which includes December 31 of the first year in the performance period. The last year for which credits may be used is the taxable year which includes December 31 of the last year of the performance period. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(6) The key employer may use the wage retention credit to reduce the key employer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the key employer of the credit shall not change the amount that otherwise would be reported by the key employer to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

Source: Laws 2020, LB1107, § 59.

Cross References

Employment and Investment Growth Act, see section 77-4101.
ImagiNE Nebraska Act, see section 77-6801.
Nebraska Advantage Act, see section 77-5701.

77-6517 Wage retention credit; application; fee; confidentiality; approval of application; conditions; notice; agreement.

(1) In order for the key employer to be eligible for the wage retention credit, the key employer shall file an application for an agreement with the director.

(2) The application shall:

(a) State the exact name of the taxpayer and any related companies;

(b) Include a description, in detail, of the nature of the company's business, including the products sold and respective markets;

(c) Request that the company be considered for approval under the Key Employer and Jobs Retention Act;

(d) Acknowledge that the key employer understands and complies with the requirements for providing health insurance, providing a sufficient package of benefits, enforcing a policy against discrimination, and verifying the work eligibility status of all new employees;

(e) State the number of base-year employees; and

(f) Include a nonrefundable application fee of five thousand dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund.

(3) The application and all supporting information is confidential except for the name of the taxpayer, the number of employees retained, and whether the application has been approved.

(4) The director shall determine whether to approve the application based upon whether the applicant meets the definition of a key employer which is at risk for moving more than one thousand existing full-time jobs from the state and whether the director believes the applicant would leave the state if the application is not approved.

(5) The director shall notify the applicant in writing as to whether the application has been approved or not. The director shall decide and mail the notice within thirty days after receiving the application, regardless of whether he or she approves or disapproves the application, unless the time is extended by mutual written consent of the director and the applicant.

(6) An application may be approved only if it is consistent with the legislative purposes contained in section 77-6502 and the key employer will retain at least ninety percent of the base-year employees in the state throughout the performance period. This threshold constitutes the required level of employment for purposes of the Key Employer and Jobs Retention Act.

(7) If the application is approved by the director, the key employer and the state shall enter into a written agreement, which shall be executed on behalf of the state by the director. In the agreement, the key employer shall agree to retain at least ninety percent of the base-year employees and, in consideration of the key employer's agreement, the state shall agree to allow the wage retention credits as provided in the Key Employer and Jobs Retention Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement may contain such terms and conditions as the director specifies in order to carry out the legislative purposes of the Key Employer and Jobs Retention Act. The agreement shall contain provisions to allow the Department of Revenue to verify that the required levels of employment have been maintained.

Source: Laws 2020, LB1107, § 60.

77-6518 Wage retention credit; recapture or disallowance; interest; penalties.

(1) If the taxpayer fails to retain the required level of employment through the entire performance period, all or a portion of the wage retention credits shall be recaptured directly by the state from the taxpayer or shall be disallowed. In no event shall any wage retention credits be required to be paid back directly or indirectly by the employees. All such credits must be repaid by the taxpayer.

(2) The recapture or disallowance shall be as follows:

(a) No wage retention credits shall be allowed, and if already allowed shall be recaptured, for the actual year or years in which the required level of employment was not maintained;

(b) For wage retention credits allowed in prior years, one-tenth of the credits shall be recaptured from the taxpayer for each year the required level of employment was not maintained; and

(c) For wage retention credits for future years, one-tenth of the credits shall be disallowed for each year the required level of employment was not maintained in previous years.

(3) Any amounts required to be recaptured shall be deemed to be an underpayment of tax, immediately due and payable, and shall constitute a lien on the assets of the taxpayer. When wage retention credits were received in more than one year, the credits received in the most recent year shall be recovered first and then the credits received in earlier years shall be recovered up to the extent of the required recapture.

(4) Interest shall accrue from the due date for the return for the year in which the taxpayer failed to maintain the required level of employment.

(5) Penalties shall not accrue until ninety days after the requirement for recapture or disallowance becomes known or should have become known to the taxpayer.

(6) The recapture or disallowance required by this section may be waived by the Tax Commissioner if he or she finds the failure to maintain the required level of employment was caused by unavoidable circumstances such as an act of God or a national emergency.

Source: Laws 2020, LB1107, § 61.

77-6519 Wage retention credit; transferable; when; effect.

(1) The wage retention credits allowed under the Key Employer and Jobs Retention Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-6518. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, estate, or trust shall be liable for any repayment required by section 77-6518;

(b) The credit may be transferred to a qualified employee leasing company from a taxpayer who is a client-lessee of the qualified employee leasing company with employees performing services at the qualified location or locations of the client-lessee. The credits transferred must be designated for a specific year and cannot be carried forward by the qualified employee leasing company. The credits may only be used by the qualified employee leasing company to offset the income tax withholding liability under section 77-2756 or 77-2757 for withholding for employees performing services for the client-lessee in Nebraska. The offset to such withholding liability must be computed in accordance with subsection (6) of section 77-6516 based on wages paid to the employees by the qualified employee leasing company, and not the amount paid to the qualified employee leasing company by the client-lessee; and

(c) The credits previously allowed and future credits may be transferred when an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification to the director of the completed transfer, shall be entitled to any unused credits and to any future credits allowable under the Key Employer and Jobs Retention Act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any credits received either before or after the transfer.

(4) If a taxpayer dies and there is a 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 the credit may be changed only after obtaining the permission of the Tax Commissioner.

(5) The director and the Tax Commissioner may disclose information to the acquiring taxpayer about the agreement and prior credits that is reasonably necessary to determine the future credits and liabilities of the taxpayer.

Source: Laws 2020, LB1107, § 62.

77-6520 Rules and regulations.

The Department of Economic Development and the Department of Revenue, in consultation with the Governor, may adopt and promulgate rules and regulations necessary or appropriate to carry out the purposes of the Key Employer and Jobs Retention Act.

Source: Laws 2020, LB1107, § 63.

77-6521 Reports; joint hearing.

(1) The Department of Economic Development and the Department of Revenue shall jointly submit electronically an annual report to the Legislature no later than October 31 of each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Economic Development and the Department of Revenue shall together, on or before December 15 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members must be provided within thirty days after the request.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, and (c) the identity of each taxpayer that is a party to an agreement.

(3) The report shall provide information on agreement-specific total credits used every two years for each agreement. The report shall disclose the identity of the taxpayer and the total credits used during the immediately preceding two years, expressed as a single, aggregated total. The information required to be reported under this subsection shall not be reported for the first year the taxpayer maintains the required employment threshold. The information on first-year credits used shall be combined with and reported as part of the second year. Thereafter, the information on credits used for succeeding years shall be reported for each agreement every two years containing information on two years of credits used.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2020, LB1107, § 64.

77-6522 Application; valid; when; director; Tax Commissioner; powers and duties.

(1) Any complete application shall be considered a valid application on the date submitted for the purposes of the Key Employer and Jobs Retention Act.

(2) The director shall be allowed access, by the Tax Commissioner, to information associated with the Nebraska Advantage Act, the Nebraska Advantage Rural Development Act, the ImagiNE Nebraska Act, and the Employment and Investment Growth Act to meet the director's obligations under the Key Employer and Jobs Retention Act.

(3) The director may contract with the Tax Commissioner for services that the director determines are necessary to fulfill the director's responsibilities under the Key Employer and Jobs Retention Act, other than services which constitute the actual actions and decisions required to be taken or made by the director under the Key Employer and Jobs Retention Act.

Source: Laws 2020, LB1107, § 65.

Cross References

Employment and Investment Growth Act, see section 77-4101.
ImagiNE Nebraska Act, see section 77-6801.
Nebraska Advantage Act, see section 77-5701.
Nebraska Advantage Rural Development Act, see section 77-27,187.

77-6523 Applications; deadline.

There shall be no new applications under the Key Employer and Jobs Retention Act filed after May 31, 2021, without further authorization of the Legislature. All applications and all agreements pending, approved, or entered into on or before May 31, 2021, shall continue in full force and effect.

Source: Laws 2020, LB1107, § 66.

ARTICLE 66

RENEWABLE CHEMICAL PRODUCTION TAX CREDIT ACT

Section
77-6601. Act, how cited.
77-6602. Legislative findings.
77-6603. Terms, defined.
77-6604. Eligible business; program certification application; approval; requirements; agreement.
77-6605. Program certification application; consideration; limitation.
77-6606. Tax credit; application; contents; requirements; approval; effect.
77-6607. Tax credit; amount; use; how claimed.
77-6608. Tax credit; reduction, termination, or rescission; repayment or recapture of tax credit.
77-6609. Trade secret; confidentiality.
77-6610. Reports.
77-6611. Rules and regulations.

77-6601 Act, how cited.

Sections 77-6601 to 77-6611 shall be known and may be cited as the Renewable Chemical Production Tax Credit Act.

Source: Laws 2020, LB1107, § 67.

77-6602 Legislative findings.

The Legislature finds and declares that Nebraska is home to an emerging biotechnology and bioproducts sector that yields important innovations and collaborative opportunities with the existing agricultural sector. The Legislature further finds that advances in biotechnology and bioproducts will play a critical role in addressing global challenges, reducing our environmental footprint, and creating sustainable materials including renewable chemicals made from Nebraska-based agricultural products.

Source: Laws 2020, LB1107, § 68.

77-6603 Terms, defined.

For purposes of the Renewable Chemical Production Tax Credit Act, unless the context otherwise requires:

(1) Biomass feedstock means sugar, starch, polysaccharide, glycerin, lignin, fat, grease, or oil derived from plants, animals, or algae or a protein capable of being converted to a building block chemical by means of a biological or chemical conversion process;

(2) Building block chemical means a molecule that is converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product;

(3) Director means the Director of Economic Development;

(4) Eligible business means a business that has been certified by the director under section 77-6604;

(5) Food additive means a building block chemical that is not primarily consumed as food but which, when combined with other components, improves the taste, appearance, odor, texture, shelf life, or nutritional content of food. The director, in his or her discretion, shall determine whether or not a biobased chemical is primarily consumed as food;

(6) Pre-eligibility production threshold means, with respect to each eligible business, the number of pounds of renewable chemicals produced, if any, by an eligible business during the calendar year prior to the calendar year in which the business first qualified as an eligible business pursuant to section 77-6604; and

(7)(a) Renewable chemical means a building block chemical with a significant biobased content that can be used for products including polymers, plastics, food additives, solvents, intermediate chemicals, or other formulated products with a significant nonfossil carbon content.

(b) Renewable chemical includes:

(i) Biobased chemicals that can be a food, feed, or fuel additive; and

(ii) Supplements, vitamins, nutraceuticals, and pharmaceuticals.

(c) The director may include additional chemicals or materials in the definition of renewable chemical by rule and regulation after consulting with appropriate experts from the University of Nebraska, including, but not limited to, the Industrial Agricultural Products Center.

(d) Renewable chemical does not include a chemical sold or used as fuel.

Source: Laws 2020, LB1107, § 69.

77-6604 Eligible business; program certification application; approval; requirements; agreement.

(1) A business may apply to the director for certification as an eligible business. The program certification application shall be in the form and be made under the procedures specified by the director.

(2) Within thirty days after receiving a program certification application under this section, the director shall certify the business as satisfying the conditions required of an eligible business, request additional information, or deny the program certification application. If the director requests additional information, the director shall certify the business or deny the program certification application within thirty days after receiving the additional information. If the director neither certifies the business nor denies the program certification application within thirty days after receiving the original program certification application or within thirty days after receiving the additional information requested, whichever is later, then the program certification application is deemed approved if the business meets the requirements in subsection (3) of this section. A business that applies for program certification and is denied may reapply.

(3) To be certified as an eligible business under the Renewable Chemical Production Tax Credit Act, a business shall meet all of the following requirements:

(a) The business produced at least one million pounds of renewable chemicals in this state during the calendar year for which tax credits are sought;

(b) The business is physically located in this state;

(c) The business organized, expanded, or located in this state on or after January 1, 2021; and

(d) The business is in compliance with all agreements entered into under the act and pursuant to any other tax credits or programs administered by the Department of Economic Development or the Department of Revenue.

(4)(a) An eligible business shall enter into an agreement with the director for the successful completion of all requirements of the act. The agreement may certify the business to receive tax credits under the act for up to four years.

(b) As part of the agreement, the eligible business shall agree to collect and provide any information reasonably required by the director or the Department of Revenue in order to allow the director and department to fulfill their reporting obligations under section 77-6610.

Source: Laws 2020, LB1107, § 70.

77-6605 Program certification application; consideration; limitation.

The director shall consider program certification applications under section 77-6604 in the order in which they are received. The director may accept program certification applications on a continuous basis or may establish, by rule and regulation, an annual program certification application deadline. The director may approve program certification applications for eligible businesses for a total of up to three million dollars in tax credits for calendar years 2022 and 2023 and up to six million dollars per calendar year for calendar years 2024 and beyond. Program certification applications approved after such

annual limit has been reached shall be placed on a wait list in the order in which they are received.

Source: Laws 2020, LB1107, § 71.

77-6606 Tax credit; application; contents; requirements; approval; effect.

(1) An eligible business may apply to the Department of Revenue for tax credits under the Renewable Chemical Production Tax Credit Act.

(2) To receive tax credits, the eligible business shall submit a tax credit application to the Department of Revenue on a form prescribed by the department. The tax credit application shall be made during the calendar year following the calendar year in which the eligible business produced the renewable chemicals for which it seeks tax credits. The tax credit application shall include the following information:

(a) The number of pounds of renewable chemicals produced in the state by the eligible business during the calendar year for which tax credits are sought; and

(b) Any other information reasonably required by the department in order to establish and verify the amount of credits earned under the act.

(3) An eligible business shall fulfill all the requirements of the act and its agreement with the director under section 77-6604 before receiving tax credits under the act or entering into a subsequent agreement. If an agreement is not successfully fulfilled, the director may decline to enter into a subsequent agreement and the Department of Revenue may decline to issue a tax credit.

(4) If the department determines that a tax credit application is complete, that an eligible business qualifies for tax credits, and that the eligible business has fulfilled all requirements of its agreement with the director, the department shall approve the tax credit application within the limits set forth in sections 77-6605 and 77-6607 and shall certify the amount of tax credits approved to the eligible business.

Source: Laws 2020, LB1107, § 72.

77-6607 Tax credit; amount; use; how claimed.

(1) The tax credit under the Renewable Chemical Production Tax Credit Act shall be in an amount equal to the product of seven and one-half cents multiplied by the number of pounds of renewable chemicals produced in this state by the eligible business during each calendar year in excess of the eligible business's pre-eligibility production threshold. The maximum amount of tax credits that may be issued to an eligible business under a single tax credit application shall not exceed one million five hundred thousand dollars per year.

(2) The tax credit shall be a refundable credit that may be used against any income tax imposed by the Nebraska Revenue Act of 1967. Any credit in excess of the eligible business's tax liability shall be refunded to the taxpayer.

(3) An eligible business shall not receive a tax credit for renewable chemicals produced before the date the business first qualified as an eligible business.

(4) The tax credit shall not be available for any renewable chemicals produced before the 2022 calendar year.

(5) Any tax credit allowable to a partnership, a limited liability company, a subchapter S corporation, or an estate or trust may be distributed to the

partners, limited liability company members, shareholders, or beneficiaries in the same manner as income is distributed.

(6) An eligible business shall claim the tax credit by attaching the tax credit certification received from the department under section 77-6606 to its tax return for the tax year in which the credit was approved.

Source: Laws 2020, LB1107, § 73.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-6608 Tax credit; reduction, termination, or rescission; repayment or recapture of tax credit.

The failure by an eligible business in fulfilling any requirement of the Renewable Chemical Production Tax Credit Act or any of the terms and obligations of an agreement entered into pursuant to section 77-6604 may result in the reduction, termination, or rescission of the tax credits under the act and may subject the eligible business to the repayment or recapture of tax credits claimed.

Source: Laws 2020, LB1107, § 74.

77-6609 Trade secret; confidentiality.

Except for the identity of a recipient of tax credits under the Renewable Chemical Production Tax Credit Act and the amount of such credits, any information or record in the possession of the Department of Economic Development or Department of Revenue with respect to the act shall be presumed by such departments to be a trade secret and shall be kept confidential by such departments unless otherwise ordered by a court.

Source: Laws 2020, LB1107, § 75.

77-6610 Reports.

(1) On or before January 31, 2024, and on or before each January 31 thereafter, the director and the Department of Revenue shall electronically submit a report on the Renewable Chemical Production Tax Credit Act to the Revenue Committee of the Legislature. At a minimum, the report shall include the following information regarding tax credits and the recipients of such credits:

(a) The aggregate number of pounds, and a list of each type, of renewable chemicals produced in Nebraska by all recipients (i) during the calendar year prior to the calendar year for which each recipient first received tax credits and (ii) for each calendar year thereafter;

(b) The aggregate sales of all renewable chemicals produced by all recipients in each calendar year for which there are at least five recipients;

(c) The aggregate number of pounds, and a list of each type, of biomass feedstock used in the production of renewable chemicals in Nebraska by all recipients (i) during the calendar year prior to the calendar year for which each recipient first received tax credits and (ii) for each calendar year thereafter;

(d) The number of employees located in Nebraska of all recipients (i) during the calendar year prior to the calendar year for which each recipient first received tax credits and (ii) for each calendar year thereafter;

(e) The number and aggregate amount of tax credits issued for each calendar year;

(f) The number of eligible businesses placed on the wait list for each calendar year and the total number of eligible businesses remaining on the wait list at the end of that calendar year;

(g) The dollar amount of tax credit claims placed on the wait list for each calendar year and the total dollar amount of tax credit claims remaining on the wait list at the end of that calendar year;

(h) For each eligible business which received tax credits during each calendar year: (i) The identity of the eligible business; (ii) the amount of the tax credits; and (iii) the manner in which the eligible business first qualified as an eligible business, whether by organizing, expanding, or locating in the state; and

(i) The total amount of all tax credits claimed during each calendar year, and the portion issued as refunds.

(2) In order to protect the presumption of confidentiality provided for in section 77-6609, the director and Department of Revenue shall report all information in an aggregate form to prevent, to the extent reasonably possible, information being attributable to any particular eligible business, except as provided in subdivision (1)(h) of this section.

Source: Laws 2020, LB1107, § 76.

77-6611 Rules and regulations.

The Department of Economic Development and Department of Revenue may adopt and promulgate rules and regulations necessary to carry out the Renewable Chemical Production Tax Credit Act.

Source: Laws 2020, LB1107, § 77.

ARTICLE 67

NEBRASKA PROPERTY TAX INCENTIVE ACT

Section
77-6701. Act, how cited.
77-6702. Terms, defined.
77-6703. Tax credit for school district taxes paid.
77-6704. Tax credit; refundable; procedure for certain taxpayers.
77-6705. Rules and regulations.
77-6706. Tax credit for community college taxes paid.

77-6701 Act, how cited.

Sections 77-6701 to 77-6706 shall be known and may be cited as the Nebraska Property Tax Incentive Act.

Source: Laws 2020, LB1107, § 111; Laws 2022, LB873, § 4.
Effective date July 21, 2022.

77-6702 Terms, defined.

For purposes of the Nebraska Property Tax Incentive Act:

(1) Allowable growth percentage means the percentage increase, if any, in the total assessed value of all real property in the state from the prior year to the

current year, as determined by the department, except that in no case shall the allowable growth percentage exceed five percent in any one year;

(2) Community college taxes means property taxes levied on real property in this state by a community college area, excluding any property taxes levied for bonded indebtedness and any property taxes levied as a result of an override of limits on property tax levies approved by voters pursuant to section 77-3444;

(3) Department means the Department of Revenue;

(4) Eligible taxpayer means any individual, corporation, partnership, limited liability company, trust, estate, or other entity that pays school district taxes or community college taxes during a taxable year; and

(5) School district taxes means property taxes levied on real property in this state by a school district or multiple-district school system, excluding any property taxes levied for bonded indebtedness and any property taxes levied as a result of an override of limits on property tax levies approved by voters pursuant to section 77-3444.

Source: Laws 2020, LB1107, § 112; Laws 2022, LB873, § 5.
Effective date July 21, 2022.

77-6703 Tax credit for school district taxes paid.

(1) For taxable years beginning or deemed to begin on or after January 1, 2020, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each eligible taxpayer a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 or against the franchise tax imposed by sections 77-3801 to 77-3807. The credit shall be equal to the credit percentage for the taxable year, as set by the department under subsection (2) of this section, multiplied by the amount of school district taxes paid by the eligible taxpayer during such taxable year.

(2)(a) For taxable years beginning or deemed to begin during calendar year 2020, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be one hundred twenty-five million dollars;

(b) For taxable years beginning or deemed to begin during calendar year 2021, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be one hundred twenty-five million dollars plus either (i) the amount calculated for such calendar year under subdivision (3)(b)(ii)(B) of section 77-4602 or (ii) the amount calculated for such calendar year under subdivision (3)(c)(ii)(B) of section 77-4602, whichever is applicable;

(c) For taxable years beginning or deemed to begin during calendar year 2022, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be five hundred forty-eight million dollars;

(d) For taxable years beginning or deemed to begin during calendar year 2023, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be five hundred sixty million seven hundred thousand dollars; and

(e) For taxable years beginning or deemed to begin during calendar year 2024 and each calendar year thereafter, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be the maximum amount of credits allowed in the prior year increased by the allowable growth percentage.

(3) If the school district taxes are paid by a corporation having an election in effect under subchapter S of the Internal Revenue Code, a partnership, a limited liability company, a trust, or an estate, the amount of school district taxes paid during the taxable year may be allocated to the shareholders, partners, members, or beneficiaries in the same proportion that income is distributed for taxable years beginning or deemed to begin before January 1, 2021, under the Internal Revenue Code of 1986, as amended. The department shall provide forms and schedules necessary for verifying eligibility for the credit provided in this section and for allocating the school district taxes paid. For taxable years beginning or deemed to begin on or after January 1, 2021, under the Internal Revenue Code of 1986, as amended, the refundable credit shall be claimed by the corporation having an election in effect under subchapter S of the Internal Revenue Code, the partnership, the limited liability company, the trust, or the estate that paid the school district taxes.

(4) For any fiscal year or short year taxpayer, the credit may be claimed in the first taxable year that begins following the calendar year for which the credit percentage was determined. The credit shall be taken for the school district taxes paid by the taxpayer during the immediately preceding calendar year.

(5) For the first taxable year beginning or deemed to begin on or after January 1, 2021, and before January 1, 2022, under the Internal Revenue Code of 1986, as amended, for a corporation having an election in effect under subchapter S of the Internal Revenue Code, a partnership, a limited liability company, a trust, or an estate that paid school district taxes in calendar year 2020 but did not claim the credit directly or allocate such school district taxes to the shareholders, partners, members, or beneficiaries as permitted under subsection (3) of this section, there shall be allowed an additional refundable credit. This credit shall be equal to six percent, multiplied by the amount of school district taxes paid during 2020 by the eligible taxpayer.

Source: Laws 2020, LB1107, § 113; Laws 2021, LB181, § 1; Laws 2022, LB873, § 6.
Effective date July 21, 2022.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-6704 Tax credit; refundable; procedure for certain taxpayers.

The department shall develop a procedure which will allow eligible taxpayers who are not subject to Nebraska income tax or franchise tax to be able to claim and receive the refundable credits allowed under the Nebraska Property Tax Incentive Act.

Source: Laws 2020, LB1107, § 114.

77-6705 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Nebraska Property Tax Incentive Act.

Source: Laws 2020, LB1107, § 115.

77-6706 Tax credit for community college taxes paid.

(1) For taxable years beginning or deemed to begin on or after January 1, 2022, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each eligible taxpayer a refundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 or against the franchise tax imposed by sections 77-3801 to 77-3807. The credit shall be equal to the credit percentage for the taxable year, as set by the department under subsection (2) of this section, multiplied by the amount of community college taxes paid by the eligible taxpayer during such taxable year.

(2)(a) For taxable years beginning or deemed to begin during calendar year 2022, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be fifty million dollars;

(b) For taxable years beginning or deemed to begin during calendar year 2023, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be one hundred million dollars;

(c) For taxable years beginning or deemed to begin during calendar year 2024, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be one hundred twenty-five million dollars;

(d) For taxable years beginning or deemed to begin during calendar year 2025, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be one hundred fifty million dollars;

(e) For taxable years beginning or deemed to begin during calendar year 2026, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be one hundred ninety-five million dollars; and

(f) For taxable years beginning or deemed to begin during calendar year 2027 and each calendar year thereafter, the department shall set the credit percentage so that the total amount of credits for such taxable years shall be the maximum amount of credits allowed in the prior year increased by the allowable growth percentage.

(3) If the community college taxes are paid by a corporation having an election in effect under subchapter S of the Internal Revenue Code, a partnership, a limited liability company, a trust, or an estate, the refundable credit shall be claimed by such corporation, partnership, limited liability company, trust, or estate.

(4) For any fiscal year or short year taxpayer, the credit may be claimed in the first taxable year that begins following the calendar year for which the credit percentage was determined. The credit shall be taken for the community college taxes paid by the taxpayer during the immediately preceding calendar year.

Source: Laws 2022, LB873, § 7.
Effective date July 21, 2022.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 68
IMAGINE NEBRASKA ACT

Section
77-6801. Act, how cited.

Section

77-6801 Act, how cited.

Sections 77-6801 to 77-6843 shall be known and may be cited as the ImagiNE Nebraska Act.

Source: Laws 2020, LB1107, § 1.

77-6802 Policy.

The Legislature hereby finds and declares that it is the policy of this state to modernize its economic development platform in order to (1) encourage new businesses to relocate to Nebraska, (2) encourage existing businesses to remain and grow in Nebraska, (3) encourage the creation and retention of new, high-paying jobs in Nebraska, (4) attract and retain investment capital in Nebraska, (5) develop the Nebraska workforce, (6) simplify the administration of the tax incentive program created in the ImagiNE Nebraska Act for both businesses and the state, and (7) improve the transparency and accountability of such program.

Source: Laws 2020, LB1107, § 2.

77-6803 Definitions, where found.

For purposes of the ImagiNE Nebraska Act, the definitions found in sections 77-6804 to 77-6825 shall be used.

Source: Laws 2020, LB1107, § 3.

77-6804 Additional definitions.

Any term shall have the same meaning as used in Chapter 77, article 27, except as otherwise defined in the ImagiNE Nebraska Act.

Source: Laws 2020, LB1107, § 4.

77-6805 Base year, defined.

Base year means the year immediately preceding the year of application, subject to the following exceptions:

(1) Except as otherwise provided in subdivision (2) of this section, if the year of application is 2021, the base year is either 2019 or 2020, whichever year the applicant had the larger number of equivalent employees at the qualified location or locations; and

(2) If the year of application is 2021 or 2022 and the applicant increased the number of equivalent employees at the qualified location or locations in either 2020 or 2021 in response to the COVID-19 pandemic, the base year is 2019.

Source: Laws 2020, LB1107, § 5; Laws 2022, LB1150, § 16.
Operative date July 21, 2022.

77-6806 Base-year employee, defined.

Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the qualified location or locations.

Source: Laws 2020, LB1107, § 6.

77-6807 Carryover period, defined.

Carryover period means the period of three years immediately following the end of the performance period.

Source: Laws 2020, LB1107, § 7.

77-6808 Compensation, defined.

Compensation means the wages and other payments subject to the federal medicare tax.

Source: Laws 2020, LB1107, § 8.

77-6809 Director, defined.

Director means the Director of Economic Development.

Source: Laws 2020, LB1107, § 9.

77-6810 Equivalent employees, defined.

Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year. Only the hours paid to employees who were employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer shall be included in such computation. A salaried employee who receives a predetermined amount of compensation each pay period on a weekly or less frequent basis is deemed to have been paid for forty hours per week during the pay period.

Source: Laws 2020, LB1107, § 10; Laws 2021, LB18, § 1.

77-6811 Investment, defined.

Investment means the value of qualified property incorporated into or used at the qualified location or locations. For qualified property owned by the taxpayer, the value shall be the original cost of the property. Improvements to real estate qualify as investment even if the entire improvement is not finished or ready for use. The percentage of completion of the improvement determines the portion of the investment that has occurred for any given year. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation. For purposes of this section, original cost means the amount required to be capitalized for depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended. Any amount, including the labor of the taxpayer, that is capitalized as a part of the cost of the qualified property or that is written off under section 179 of the Internal Revenue Code of 1986, as amended, shall be considered part of the original cost.

Source: Laws 2020, LB1107, § 11; Laws 2022, LB1150, § 17.
Operative date April 20, 2022.

77-6812 Motor vehicle, defined.

Motor vehicle means any motor vehicle, trailer, or semitrailer as defined in the Motor Vehicle Registration Act and subject to registration for operation on the highways.

Source: Laws 2020, LB1107, § 12.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-6813 NAICS, defined.

NAICS means the North American Industry Classification System established by the United States Department of Commerce and applied to classify the locations owned or leased by the taxpayer, including the specific NAICS codes and code definitions in effect on January 1, 2020.

Source: Laws 2020, LB1107, § 13.

77-6814 Nebraska statewide average hourly wage for any year, defined.

Nebraska statewide average hourly wage for any year means the most recent statewide average hourly wage paid by all employers in all counties in Nebraska as calculated by the Office of Labor Market Information of the Department of Labor using annual data from the Quarterly Census of Employment and Wages by October 1 of the year prior to application. Hourly wages shall be calculated by dividing the reported average annual weekly wage by forty.

Source: Laws 2020, LB1107, § 14.

77-6815 Number of new employees, defined.

(1) Number of new employees, for purposes of subdivisions (1)(b), (4)(d), (5)(c), and (8)(b)(iii) of section 77-6831, means the lesser of:

(a) The number of equivalent employees that are employed at the qualified location or locations during a year that are in excess of the number of equivalent employees during the base year; or

(b) The sum of:

(i) The number of equivalent employees employed full-time at the qualified location or locations during a year who are not base-year employees, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application; and

(ii) The number of equivalent employees who were not employed full-time at the qualified location during the base year and became employed full-time at the qualified location after the base year, after subtracting the hours worked by such employees in the base year, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application.

(2) Number of new employees, for purposes of subdivisions (4)(a)(i) and (5)(a)(i) of section 77-6831, means the lesser of:

(a) The number of equivalent employees that are employed at the qualified location or locations during a year that are in excess of the number of equivalent employees during the base year; or

(b) The sum of:

(i) The number of equivalent employees employed full-time at the qualified location or locations during a year who are not base-year employees, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least ninety percent of the Nebraska statewide average hourly wage for the year of application; and

(ii) The number of equivalent employees who were not employed full-time at the qualified location during the base year and became employed full-time at

the qualified location after the base year, after subtracting the hours worked by such employees in the base year, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least ninety percent of the Nebraska statewide average hourly wage for the year of application.

(3) Number of new employees, for purposes of subdivisions (4)(a)(ii) and (5)(a)(ii) of section 77-6831, means the lesser of:

(a) The number of equivalent employees that are employed at the qualified location or locations during a year that are in excess of the number of equivalent employees during the base year; or

(b) The sum of:

(i) The number of equivalent employees employed full-time at the qualified location or locations during a year who are not base-year employees, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least seventy-five percent of the Nebraska statewide average hourly wage for the year of application; and

(ii) The number of equivalent employees who were not employed full-time at the qualified location during the base year and became employed full-time at the qualified location after the base year, after subtracting the hours worked by such employees in the base year, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least seventy-five percent of the Nebraska statewide average hourly wage for the year of application.

(4) Number of new employees, for purposes of subdivisions (4)(a)(iii), (4)(e), (5)(a)(iii), and (5)(d) of section 77-6831, means the lesser of:

(a) The number of equivalent employees that are employed at the qualified location or locations during a year that are in excess of the number of equivalent employees during the base year; or

(b) The sum of:

(i) The number of equivalent employees employed full-time at the qualified location or locations during a year who are not base-year employees, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least seventy percent of the Nebraska statewide average hourly wage for the year of application; and

(ii) The number of equivalent employees who were not employed full-time at the qualified location during the base year and became employed full-time at the qualified location after the base year, after subtracting the hours worked by such employees in the base year, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least seventy percent of the Nebraska statewide average hourly wage for the year of application.

(5) Number of new employees, for all other purposes, except as otherwise provided in the ImagiNE Nebraska Act, means the lesser of:

(a) The number of equivalent employees that are employed at the qualified location or locations during a year that are in excess of the number of equivalent employees during the base year; or

(b) The sum of:

(i) The number of equivalent employees employed full-time at the qualified location or locations during a year who are not base-year employees, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least the Nebraska statewide average hourly wage for the year of application; and

(ii) The number of equivalent employees who were not employed full-time at the qualified location during the base year and became employed full-time at the qualified location after the base year, after subtracting the hours worked by such employees in the base year, who meet the health coverage requirement of subsection (7) of this section, and who are paid compensation at a rate equal to at least the Nebraska statewide average hourly wage for the year of application.

(6) For employees who work both at a qualified location and also perform services for the taxpayer at other nonqualified locations, they will be included in determining the number of new employees if more than fifty percent of the time for which they are compensated is spent at the qualified location. For any year other than the base year, employees who work at the qualified location fifty percent or less of the time for which they are compensated are not considered employed at the qualified location. For employees who work both at a qualified location and also perform services for the taxpayer at the employee's Nebraska residence, the time for which an employee is compensated for services performed at the employee's Nebraska residence will be considered spent at the qualified location.

(7) An employee meets the health coverage requirement if the taxpayer offers to that employee, for that year, the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, as those terms are defined and described in section 5000A of the Internal Revenue Code of 1986, as amended, and the regulations for such section.

(8) For purposes of this section, employed full-time means that the employee is a full-time employee as defined and described in section 4980H of the Internal Revenue Code of 1986, as amended, and the regulations for such section.

Source: Laws 2020, LB1107, § 15; Laws 2022, LB1150, § 18.
Operative date July 21, 2022.

77-6816 Performance period, defined.

Performance period means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the sixth year after the year the required increases were met or exceeded.

Source: Laws 2020, LB1107, § 16.

77-6817 Qualified employee leasing company, defined.

Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee.

Source: Laws 2020, LB1107, § 17.

77-6818 Qualified location, defined.

(1) Qualified location means a location at which the majority of the business activities conducted are within one or more of the following NAICS codes or the following descriptions:

(a) Manufacturing - 31, 32, or 33, including pre-production services;

(b) Testing Laboratories - 541380;

(c) Rail Transportation - 482;

(d) Truck Transportation - 484;

(e) Insurance Carriers - 5241;

(f) Wired Telecommunications Carriers - 517311;

(g) Wireless Telecommunications Carriers (except Satellite) - 517312;

(h) Telemarketing Bureaus and Other Contact Centers - 561422;

(i) Data Processing, Hosting, and Related Services - 518210;

(j) Computer Facilities Management Services - 541513;

(k) Warehousing and Storage - 4931;

(l) The administrative management of the taxpayer's activities, including headquarter facilities relating to such activities, or the administrative management of any of the activities of any business entity or entities in which the taxpayer or a group of its owners hold any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;

(m) Logistics Facilities - Portions of NAICS 488210, 488310, and 488490 dealing with independently operated trucking terminals, independently operated railroad and railway terminals, and waterfront terminal and port facility operations;

(n) Services provided on aircraft brought into this state by an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and will not remain in this state more than ten days after the service is completed;

(o) The conducting of research, development, or testing, or any combination thereof, for scientific, agricultural, animal husbandry, food product, industrial, or technology purposes;

(p) The production of electricity by using one or more sources of renewable energy to produce electricity for sale. For purposes of this subdivision, sources of renewable energy includes, but is not limited to, wind, solar, energy storage, geothermal, hydroelectric, biomass, nuclear, and transmutation of elements;

(q) Computer Systems Design and Related Services - 5415;

(r) The performance of financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission;

(s) Postharvest Crop Activities (except Cotton Ginning) - 115114; or

(t) The processing of tangible personal property. For purposes of this subdivision, processing means to subject to a particular method, system, or technique of preparation, handling, or other treatment designed to prepare tangible

personal property for market, manufacture, or other commercial use which does not result in the transformation of such property into a substantially different character.

(2)(a) Qualified location also includes any other business location if at least seventy-five percent of the revenue derived at the location is from sales to customers who are not related persons which are delivered or provided from the qualified location to a location that is not within Nebraska according to the sourcing rules in subsections (2) and (3) of section 77-2734.14. Intermediate sales to related persons are included as sales to customers delivered or provided to a location outside Nebraska if the related person delivers or provides the goods or services to a location outside Nebraska. Even if a location meets the seventy-five percent requirement of this subdivision, such location shall not constitute a qualified location under this subdivision if the majority of the business activities conducted at such location are within any of the following NAICS codes or any combination thereof:

(i) Agriculture, Forestry, Fishing and Hunting - 11, excluding NAICS code 115114;

(ii) Transportation and Warehousing - 48-49;

(iii) Information - 51;

(iv) Utilities - 22;

(v) Mining, Quarrying, and Oil and Gas Extraction - 21;

(vi) Public Administration - 92; or

(vii) Construction - 23.

(b) The director may adopt and promulgate rules and regulations establishing an alternative method in circumstances in which subdivision (2)(a) of this section does not accurately reflect the out-of-state sales taking place at locations within Nebraska for a particular industry.

(3) The determination of the majority of the business activities shall be made based on the number of employees working in the respective business activities. The director may adopt and promulgate rules and regulations establishing an alternative method in circumstances in which other factors provide a better reflection of business activities.

(4) The delineation of the types of business activities which enable a location to constitute a qualified location is based on the state's intention to attract certain types of business activities and to responsibly accomplish the purposes of the ImagiNE Nebraska Act by directing the state's incentive capabilities towards business activities which, due to their national nature, could locate outside of Nebraska and which therefore would, through the use of incentives, be motivated to locate in Nebraska. By listing specific types of business activities in subsection (1) of this section, the state has determined such business activities by their nature meet these objectives. By specifying the national nature of a taxpayer's revenue in subsection (2) of this section, the state has determined that certain other types of business activities can meet these objectives.

Source: Laws 2020, LB1107, § 18; Laws 2021, LB18, § 2; Laws 2021, LB84, § 2.

77-6819 Qualified property, defined.

Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property, that will be located and used at the project. Qualified property does not include (1) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (2) property that is rented by the taxpayer qualifying under the ImagiNE Nebraska Act to another person. Qualified property of the taxpayer located at the residence of an employee working in Nebraska from his or her residence on tasks interdependent with the work performed at the project shall be deemed located and used at the project.

Source: Laws 2020, LB1107, § 19.

77-6820 Ramp-up period, defined.

Ramp-up period means the period of time from the date of the complete application through the end of the fourth year after the year in which the complete application was filed with the director.

Source: Laws 2020, LB1107, § 20.

77-6821 Related persons, defined.

Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended.

Source: Laws 2020, LB1107, § 21.

77-6822 Taxpayer, defined.

Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any entity that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes and such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended. For purposes of this section, political subdivision includes any public corporation created for the benefit of a political subdivision and any group of political subdivisions forming a joint public agency, organized by interlocal agreement, or utilizing any other method of joint action.

Source: Laws 2020, LB1107, § 22.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-6823 Wages, defined.

Wages means compensation, not to exceed one million dollars per year for any employee.

Source: Laws 2020, LB1107, § 23.

77-6824 Year, defined.

Year means calendar year.

Source: Laws 2020, LB1107, § 24.

77-6825 Year of application, defined.

Year of application means the year that a completed application is filed under the ImagiNE Nebraska Act.

Source: Laws 2020, LB1107, § 25.

77-6826 Qualified employee leasing company; employees; duty.

An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of the ImagiNE Nebraska Act if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue with access to the records of employees leased to the client-lessee.

Source: Laws 2020, LB1107, § 26.

77-6827 Incentives; application; contents; fee; approval; when; application; deadlines.

(1) In order to utilize the incentives allowed in the ImagiNE Nebraska Act, the taxpayer shall file an application with the director, on a form developed by the director, requesting an agreement.

(2) The application shall:

(a) Identify the taxpayer applying for incentives;

(b) Identify all locations sought to be within the agreement and the reason each such location constitutes or is expected to constitute a qualified location;

(c) State the estimated, projected amount of new investment and the estimated, projected number of new employees;

(d) Identify the required levels of employment and investment for the various incentives listed within section 77-6831 that will govern the agreement. The taxpayer may identify different levels of employment and investment until the first December 31 following the end of the ramp-up period on a form approved by the director. The identified levels of employment and investment will govern all years covered under the agreement;

(e) Identify whether the agreement is for a single qualified location, all qualified locations within a county, all qualified locations in more than one county, or all qualified locations within the state;

(f) Acknowledge that the taxpayer understands the requirements for offering health coverage, and for reporting the value of such coverage, as specified in the ImagiNE Nebraska Act;

(g) Acknowledge that the taxpayer does not violate any state or federal law against discrimination;

(h) Acknowledge that the taxpayer understands the requirements for providing a sufficient package of benefits to its employees as specified in the ImagiNE Nebraska Act; and

(i) Contain a nonrefundable application fee of five thousand dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section.

(4) Once satisfied that the application is consistent with the purposes stated in the ImagiNE Nebraska Act for one or more qualified locations within this state, the director shall approve the application, subject to the base authority limitations provided in section 77-6839.

(5) The director shall make his or her determination to approve or not approve an application within ninety days after the date of the application. If the director requests, by mail or by electronic means, additional information or clarification from the taxpayer in order to make his or her determination, such ninety-day period shall be tolled from the time the director makes the request to the time he or she receives the requested information or clarification from the taxpayer. The taxpayer and the director may also agree to extend the ninety-day period. If the director fails to make his or her determination within the prescribed ninety-day period, the application is deemed approved, subject to the base authority limitations provided in section 77-6839.

(6) There shall be no new applications for incentives filed under this section after December 31, 2030. All complete applications filed on or before December 31, 2030, shall be considered by the director and approved if the location or locations and taxpayer qualify for benefits, subject to the base authority limitations provided in section 77-6839. Agreements may be executed with regard to complete applications filed on or before December 31, 2030. All agreements pending, approved, or entered into before such date shall continue in full force and effect.

Source: Laws 2020, LB1107, § 27.

77-6828 Agreement; requirements; contents; confidentiality; exceptions; duration of agreement; incentives; use.

(1) Within ninety days after approval of the application, the director shall prepare and deliver a written agreement to the taxpayer for the taxpayer's signature. The taxpayer and the director shall enter into such written agreement. Under the agreement, the taxpayer shall agree to increase employment or investment at the qualified location or locations, report compensation, wage, and hour data at the qualified location or locations to the Department of Revenue annually, and report all qualified property at the qualified location or locations to the Department of Revenue annually. The director, on behalf of the State of Nebraska, shall agree to allow the taxpayer to use the incentives contained in the ImagiNE Nebraska Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The qualified location or locations. If a location or locations are to be qualified under subsection (2) of section 77-6818, the agreement must include a commitment by the taxpayer that the seventy-five percent requirement of such subsection will be met;

(b) The type of documentation the taxpayer will need to supply to support its claim for incentives under the act;

(c) The date the application was complete;

(d) The E-verify number or numbers for the qualified location or locations provided by the United States Citizenship and Immigration Services;

(e) A requirement that the taxpayer provide any information needed by the director or the Tax Commissioner to perform their respective responsibilities under the ImagiNE Nebraska Act, in the manner specified by the director or Tax Commissioner;

(f) A requirement that the taxpayer provide an annually updated timetable showing the expected sales and use tax refunds and what year they are expected to be claimed, in the manner specified by the Tax Commissioner. The timetable shall include both direct refunds due to investment and credits taken as sales and use tax refunds as accurately as reasonably possible;

(g) A requirement that the taxpayer update the Tax Commissioner annually, with its income tax return or in the manner specified by the Tax Commissioner, on any changes in plans or circumstances which it reasonably expects will affect the level of new investment and number of new employees at the qualified location or locations. If the taxpayer fails to comply with this requirement, the Tax Commissioner may defer any pending incentive utilization until the taxpayer does comply;

(h) A requirement that the taxpayer provide information regarding the value of health coverage provided to employees during the year who are not base-year employees and who are paid the required compensation as needed by the director or the Tax Commissioner to perform their respective responsibilities under the ImagiNE Nebraska Act, in the manner specified by the director or Tax Commissioner;

(i) A requirement that the taxpayer not violate any state or federal law against discrimination;

(j) A requirement that the taxpayer offer a sufficient package of benefits to the employees employed full-time at the qualified location or locations during the year who are not base-year employees and who are paid the required compensation. If a taxpayer does not offer a sufficient package of benefits to any such employee for any year during the performance period, that employee shall not count toward the number of new employees for such year. For purposes of this subdivision, benefits means nonwage remuneration offered to an employee, including medical and dental insurance plans, pension, retirement, and profit-sharing plans, child care services, life insurance coverage, vision insurance coverage, disability insurance coverage, and any other nonwage remuneration as determined by the director. The director may adopt and promulgate rules and regulations to specify what constitutes a sufficient package of benefits. In determining what constitutes a sufficient package of benefits, the director shall consider (i) benefit packages customarily offered in Nebraska by private employers to full-time employees, (ii) the impact of the cost of such benefits on the ability to attract new employment and investment under the ImagiNE Nebraska Act, and (iii) the costs that employees must bear to obtain benefits not offered by an employer; and

(k) A requirement that the taxpayer provide the following information for the purpose of tax incentive performance audits:

(i) The most recent taxable valuations and levy rates for all qualified locations;

(ii) If credits are used for job training pursuant to subdivision (1)(e) of section 77-6832, a program schedule of the job training activities; and

(iii) If credits are used for talent recruitment pursuant to subdivision (1)(e) of section 77-6832, the city and state where recruited employees lived when the talent recruitment activities took place.

(2) The application, the agreement, all supporting information, and all other information reported to the director or the Tax Commissioner shall be kept confidential by the director and the Tax Commissioner, except for the name of the taxpayer, the qualified location or locations in the agreement, the estimated amounts of increased employment and investment stated in the application, the date of complete application, the date the agreement was signed, and the information required to be reported by section 77-6837. The application, the agreement, and all supporting information shall be provided by the director to the Department of Revenue. The director shall disclose, to any municipalities in which project locations exist, the approval of an application and the execution of an agreement under this section. The Tax Commissioner shall also notify each municipality of the amount and taxpayer identity for each refund of local option sales and use taxes of the municipality within thirty days after the refund is allowed or approved. Disclosures shall be kept confidential by the municipality unless publicly disclosed previously by the taxpayer or by the State of Nebraska.

(3) An agreement under the ImagiNE Nebraska Act shall have a duration of no more than fifteen years. A taxpayer with an existing agreement may apply for and receive a new agreement for any qualified location or locations that are not part of an existing agreement under the ImagiNE Nebraska Act, but cannot apply for a new agreement for a qualified location designated in an existing agreement until after the end of the performance period for the existing agreement.

(4) The incentives contained in the ImagiNE Nebraska Act shall be in lieu of the tax credits allowed by the Nebraska Advantage Rural Development Act for any project. In computing credits under the Nebraska Advantage Rural Development Act, any investment or employment which is eligible for benefits or used in determining benefits under the ImagiNE Nebraska Act shall be subtracted from the increases computed for determining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Nebraska Advantage Act shall not be considered new investment or employment for purposes of the ImagiNE Nebraska Act. The use of carryover credits under the Nebraska Advantage Act, the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the ImagiNE Nebraska Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act or the Nebraska Advantage Act does not preclude investment not eligible for such property tax exemptions from being considered new investment under the ImagiNE Nebraska Act.

Source: Laws 2020, LB1107, § 28; Laws 2022, LB1150, § 19.
Operative date July 21, 2022.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Invest Nebraska Act, see section 77-5501.
Nebraska Advantage Act, see section 77-5701.
Nebraska Advantage Rural Development Act, see section 77-27,187.
Quality Jobs Act, see section 77-4901.

77-6829 Qualified locations; base-year employment, compensation, and wage levels; review and certification; effect.

(1) The taxpayer may request the director to review and certify that the location or locations designated in the application are qualified locations under the ImagiNE Nebraska Act. The taxpayer shall describe in detail the activities taking place at the location or locations or the activities that will be taking place at the location or locations. The director shall make the determination based on the information provided by the taxpayer. The director must complete the review within ninety days after the request. If the director requests, by mail or by electronic means, additional information or clarification from the taxpayer in order to make his or her determination, the ninety-day period shall be tolled from the time the director makes the request to the time he or she receives the requested information or clarification from the taxpayer. The taxpayer and the director may also agree to extend the ninety-day period. If the director fails to make his or her determination within the prescribed ninety-day period, the certification is deemed approved for the disclosed activities.

(2) The taxpayer may request the Tax Commissioner to review and certify that the base-year employment, compensation, and wage levels are as reported by the taxpayer pursuant to subsection (1) of section 77-6828. Upon a request for such review, the Tax Commissioner shall be given access to the employment and business records of the proposed location or locations and must complete the review within one hundred eighty days after the request. If the Tax Commissioner requests, by mail or by electronic means, additional information or clarification from the taxpayer in order to make his or her determination, the one-hundred-eighty-day period shall be tolled from the time the Tax Commissioner makes the request to the time he or she receives the requested information or clarification from the taxpayer. The taxpayer and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If the Tax Commissioner fails to make his or her determination within the prescribed one-hundred-eighty-day period, the certification is deemed approved.

(3) Upon review, the director may approve, reject, or amend the qualified locations sought in the application contingent upon the accuracy of the information or plans disclosed by the taxpayer that describe the expected activity at the qualified location or locations. Upon review, the Tax Commissioner may also approve or amend the base-year employment, compensation, or wage levels reported pursuant to subsection (1) of section 77-6828 based upon the payroll information and other financial records provided by the taxpayer. Once the director or Tax Commissioner certifies the qualified location or locations and the employment, compensation, and wage levels at the qualified location or locations, the certification is binding on the Department of Revenue when the taxpayer claims benefits on a return to the extent the activities performed at the location or locations are as described in the application, the information and plans provided by the taxpayer were accurate, and the base-year information is not affected by transfers of employees from another location in Nebraska, the

acquisition of a business, or moving businesses or entities to or from the qualified location or locations.

(4) If the taxpayer does not request review and certification of whether the designated location or locations are qualified, or the base-year employment, compensation, and wage levels, those items are subject to later audit by the Department of Revenue.

Source: Laws 2020, LB1107, § 29.

77-6830 Transactions and activities excluded.

The following transactions or activities shall not create any credits or allow any benefits under the ImagiNE Nebraska Act except as specifically allowed by this section:

(1) The acquisition of a business after the date of application which is continued by the taxpayer as a part of the agreement and which was operated in this state during the three hundred sixty-six days prior to the date of acquisition. All employees of the entities added to the taxpayer by the acquisition during the three hundred sixty-six days prior to the date of acquisition shall be considered employees during the base year. Any investment prior to the date of acquisition made by the entities added to the taxpayer by the acquisition or any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the taxpayer or a related person. The first purchase by either the taxpayer or a related person shall be treated as investment if the item was first placed in service in the state after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement;

(5) Any purchase or lease of property from a related person, except that the taxpayer will be allowed any benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the taxpayer;

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and

(7) Any activity that results in benefits under the Ethanol Development Act.

Source: Laws 2020, LB1107, § 30.

Cross References

Ethanol Development Act, see section 66-1330.

77-6831 Tax incentives; amount; conditions; fee; ImagiNE Nebraska Cash Fund; created; use; investment.

(1) A taxpayer shall be entitled to the sales and use tax incentives contained in subsection (2) of this section if the taxpayer:

(a) Attains a cumulative investment in qualified property of at least five million dollars and hires at least thirty new employees at the qualified location or locations before the end of the ramp-up period;

(b) Attains a cumulative investment in qualified property of at least two hundred fifty million dollars and hires at least two hundred fifty new employees at the qualified location or locations before the end of the ramp-up period; or

(c) Attains a cumulative investment in qualified property of at least fifty million dollars at the qualified location or locations before the end of the ramp-up period. To receive incentives under this subdivision, the taxpayer must meet the following conditions:

(i) The average compensation of the taxpayer's employees at the qualified location or locations for each year of the performance period must equal at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application;

(ii) The taxpayer must offer to its employees who constitute full-time employees as defined and described in section 4980H of the Internal Revenue Code of 1986, as amended, and the regulations for such section, at the qualified location or locations for each year of the performance period, the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, as those terms are defined and described in section 5000A of the Internal Revenue Code of 1986, as amended, and the regulations for such section; and

(iii) The taxpayer must offer a sufficient package of benefits as described in subdivision (1)(j) of section 77-6828.

(2) A taxpayer meeting the requirements of subsection (1) of this section shall be entitled to the following sales and use tax incentives:

(a) A refund of all sales and use taxes paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813 from the date of the complete application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used at the qualified location or locations;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the qualified location or locations except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate when such property is incorporated into real estate at the qualified location or locations. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax;

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is annexed to, but not incorporated into, real estate at the qualified location or locations. The

refund shall be based on the cost of materials subject to the sales and use tax that were annexed to real estate; and

(v) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is both (A) incorporated into real estate at the qualified location or locations and (B) annexed to, but not incorporated into, real estate at the qualified location or locations. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) An exemption from all sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such purchases, including rentals, occurring during each year of the performance period in which the taxpayer is at or above the required levels of employment and investment, except that the exemption shall be for the actual materials purchased with respect to subdivisions (2)(a)(iii), (iv), and (v) of this section. The Tax Commissioner shall issue such rules, regulations, certificates, and forms as are appropriate to implement the efficient use of this exemption.

(3)(a) Upon execution of the agreement, the taxpayer shall be issued a direct payment permit under section 77-2705.01, notwithstanding the three million dollars in purchases limitation in subsection (1) of section 77-2705.01, for each qualified location specified in the agreement, unless the taxpayer has opted out of this requirement in the agreement. For any taxpayer who is issued a direct payment permit, until such taxpayer makes the investment in qualified property and hires the new employees at the qualified location or locations as specified in subsection (1) of this section, the taxpayer must pay and remit any applicable sales and use taxes as required by the Tax Commissioner.

(b) If the taxpayer makes the investment in qualified property and hires the new employees at the qualified location or locations as specified in subsection (1) of this section, the taxpayer shall receive the sales tax refunds described in subdivision (2)(a) of this section. For any year in which the taxpayer is not at the required levels of employment and investment, the taxpayer shall report all sales and use taxes owed for the period on the taxpayer's tax return.

(4) The taxpayer shall be entitled to one of the following credits for payment of wages to new employees:

(a)(i) If a taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to four percent times the average wage of new employees times the number of new employees. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision;

(ii) If the taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location in a county in Nebraska with a population of one hundred thousand or greater, and at which the majority of the business activities conducted are described in subdivision (1)(a) or (1)(n) of section 77-6818, the taxpayer shall be entitled to a credit equal to four percent times the average wage of new employees times the

number of new employees. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision; or

(iii) If the taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location or locations within one or more counties in Nebraska that each have a population of less than one hundred thousand, and at which the majority of the business activities conducted are described in subdivision (1)(a) or (1)(n) of section 77-6818, the taxpayer shall be entitled to a credit equal to six percent times the average wage of new employees times the number of new employees. For purposes of meeting the ten-employee requirement of this subdivision, the number of new employees shall be multiplied by two. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision;

(b) If a taxpayer hires at least twenty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal seven percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal nine percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least two hundred percent of the Nebraska statewide average hourly wage for the year of application. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision;

(c) If a taxpayer attains a cumulative investment in qualified property of at least five million dollars and hires at least thirty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal seven percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal nine percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least two hundred percent of the Nebraska statewide average hourly wage for the year of application. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision;

(d) If a taxpayer attains a cumulative investment in qualified property of at least two hundred fifty million dollars and hires at least two hundred fifty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to seven percent times

the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal nine percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least two hundred percent of the Nebraska statewide average hourly wage for the year of application. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision; or

(e) If a taxpayer attains a cumulative investment in qualified property of at least two hundred fifty thousand dollars but less than one million dollars and hires at least five new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location within an economic redevelopment area, the taxpayer shall be entitled to a credit equal to six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy percent of the Nebraska statewide average hourly wage for the year of application. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision. For purposes of this subdivision, economic redevelopment area means an area in which (i) the average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least one hundred fifty percent of the average rate of unemployment in the state during the same period and (ii) the average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area.

(5) The taxpayer shall be entitled to one of the following credits for new investment:

(a)(i) If a taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to four percent of the investment made in qualified property at the qualified location or locations;

(ii) If the taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location in a county in Nebraska with a population of one hundred thousand or greater, and at which the majority of the business activities conducted are described in subdivision (1)(a) or (1)(n) of section 77-6818, the taxpayer shall be entitled to a credit equal to four percent of the investment made in qualified property at the qualified location or locations unless the cumulative investment exceeds ten million dollars, in which case the taxpayer shall be entitled to a credit equal to seven percent of the investment made in qualified property at the qualified location or locations; or

(iii) If the taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location or locations within

one or more counties in Nebraska that each have a population of less than one hundred thousand, and at which the majority of the business activities conducted are described in subdivision (1)(a) or (1)(n) of section 77-6818, the taxpayer shall be entitled to a credit equal to four percent of the investment made in qualified property at the qualified location or locations unless the cumulative investment exceeds ten million dollars, in which case the taxpayer shall be entitled to a credit equal to seven percent of the investment made in qualified property at the qualified location or locations. For purposes of meeting the ten-employee requirement of this subdivision, the number of new employees shall be multiplied by two;

(b) If a taxpayer attains a cumulative investment in qualified property of at least five million dollars and hires at least thirty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to seven percent of the investment made in qualified property at the qualified location or locations;

(c) If a taxpayer attains a cumulative investment in qualified property of at least two hundred fifty million dollars and hires at least two hundred fifty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to seven percent of the investment made in qualified property at the qualified location or locations; or

(d) If a taxpayer attains a cumulative investment in qualified property of at least two hundred fifty thousand dollars but less than one million dollars and hires at least five new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location within an economic redevelopment area, the taxpayer shall be entitled to a credit equal to four percent of the investment made in qualified property at the qualified location or locations. For purposes of this subdivision, economic redevelopment area means an area in which (i) the average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least one hundred fifty percent of the average rate of unemployment in the state during the same period and (ii) the average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area.

(6)(a) The credit percentages prescribed in subdivisions (4)(a), (b), (c), and (d) and subdivisions (5)(a), (b), and (c) of this section shall be increased by one percentage point for wages paid and investments made at qualified locations in an extremely blighted area. For purposes of this subdivision, extremely blighted area means an area which, before the end of the ramp-up period, has been declared an extremely blighted area under section 18-2101.02.

(b) The credit percentages prescribed in subsections (4) and (5) of this section shall be increased by one percentage point if the taxpayer:

(i) Is a benefit corporation as defined in section 21-403 and has been such a corporation for at least one year prior to submitting an application under the ImagiNE Nebraska Act; and

(ii) Remains a benefit corporation as defined in section 21-403 for the duration of the taxpayer's agreement under the ImagiNE Nebraska Act.

(c) A taxpayer may, if qualified, receive one or both of the increases provided in this subsection.

(7)(a) The credits prescribed in subsections (4) and (5) of this section shall be allowable for wages paid and investments made during each year of the performance period that the taxpayer is at or above the required levels of employment and investment.

(b) The credits prescribed in subsection (5) of this section shall also be allowable during the first year of the performance period for investment in qualified property at the qualified location or locations after the date of the complete application and before the beginning of the performance period.

(8)(a) Property described in subdivision (8)(c) of this section used at the qualified location or locations, whether purchased or leased, and placed in service by the taxpayer after the date of the complete application, shall constitute separate classes of property and are eligible for exemption under the conditions and for the time periods provided in subdivision (8)(b) of this section.

(b) A taxpayer shall receive the exemption of property in subdivision (8)(c) of this section if the taxpayer attains one of the following employment and investment levels: (i) Cumulative investment in qualified property of at least five million dollars and the hiring of at least thirty new employees at the qualified location or locations before the end of the ramp-up period; (ii) cumulative investment in qualified property of at least fifty million dollars at the qualified location or locations before the end of the ramp-up period, provided the average compensation of the taxpayer's employees at the qualified location or locations for the year in which such investment level was attained equals at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application and the taxpayer offers to its employees who constitute full-time employees as defined and described in section 4980H of the Internal Revenue Code of 1986, as amended, and the regulations for such section, at the qualified location or locations for the year in which such investment level was attained, the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, as those terms are defined and described in section 5000A of the Internal Revenue Code of 1986, as amended, and the regulations for such section; or (iii) cumulative investment in qualified property of at least two hundred fifty million dollars and the hiring of at least two hundred fifty new employees at the qualified location or locations before the end of the ramp-up period. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year property included in subdivision (8)(c) of this section qualifies for the exemption, except that for a taxpayer who has filed an application under NAICS code 518210 for Data Processing, Hosting, and Related Services and who files a separate sequential application for the same NAICS code for which the ramp-up period begins with the year immediately after the end of the previous project's performance period or a taxpayer who has a project qualifying under subdivision (1)(b)(ii) of section 77-5725 and who files a separate sequential application for NAICS code 518210 for Data Processing, Hosting, and Related Services for which the ramp-up period begins with the year immediately after the end of the previous project's entitlement period, such property described in subdivision (8)(c)(i) of this section shall be eligible for the exemption from the first January 1 following the placement in service of such property through the ninth December 31 after the year the first claim for exemption is approved.

(c) The following personal property used at the qualified location or locations, whether purchased or leased, and placed in service by the taxpayer after the date of the complete application shall constitute separate classes of personal property:

(i) All personal property that constitutes a data center if the taxpayer qualifies under subdivision (8)(b)(i) or (8)(b)(ii) of this section;

(ii) Business equipment that is located at a qualified location or locations and that is involved directly in the manufacture or processing of agricultural products if the taxpayer qualifies under subdivision (8)(b)(i) or (8)(b)(ii) of this section; or

(iii) All personal property if the taxpayer qualifies under subdivision (8)(b)(iii) of this section.

(d) In order to receive the property tax exemptions allowed by subdivision (8)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each agreement and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine whether a taxpayer is eligible to obtain exemption for personal property based on the criteria for exemption and the eligibility of each item listed for exemption and, on or before August 1, certify such determination to the taxpayer and to the affected county assessor.

(9) The taxpayer shall, on or before the receipt or use of any incentives under this section, pay to the director a fee of one-half percent of such incentives, except for the exemption on personal property, for administering the ImagiNE Nebraska Act, except that the fee on any sales tax exemption may be paid by the taxpayer with the filing of its sales and use tax return. Such fee may be paid by direct payment to the director or through withholding of available refunds. A credit shall be allowed against such fee for the amount of the fee paid with the application. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the ImagiNE Nebraska Cash Fund, which fund is hereby created. The fund shall consist of fees credited under this subsection and any other money appropriated to the fund by the Legislature. The fund shall be administered by the Department of Economic Development and shall be used for administration of the ImagiNE Nebraska Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2020, LB1107, § 31; Laws 2022, LB1150, § 20; Laws 2022, LB1261, § 16.
Operative date April 20, 2022.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB1150, section 20, with LB1261, section 16, to reflect all amendments.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska State Funds Investment Act, see section 72-1260.
Qualified Judgment Payment Act, see section 77-6401.

77-6832 Income tax credits; use; tax incentive credits; use; refund claims; filing requirements; audit; director; Tax Commissioner; powers and duties; appeal.

(1)(a) The credits prescribed in section 77-6831 for a year shall be established by filing the forms required by the Tax Commissioner with the income tax return for the taxable year which includes the end of the year the credits were earned. The credits may be used and shall be applied in the order in which they were first allowable under the ImagiNE Nebraska Act. To the extent the taxpayer has credits under the Nebraska Advantage Act or the Employment and Investment Growth Act still available for use in a year or years which overlap the performance period or carryover period of the ImagiNE Nebraska Act, the credits may be used and shall be applied in the order in which they were first allowable, and when there are credits of the same age, the older tax incentive program's credits shall be applied first. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. Credits may be used beginning with the taxable year which includes December 31 of the year the required minimum levels were reached. The last year for which credits may be used is the taxable year which includes December 31 of the last year of the carryover period. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(b) The taxpayer may use the credit provided in subsection (4) of section 77-6831 (i) to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757, to the extent such liability is attributable to the number of new employees employed at the qualified location or locations, excluding any wages in excess of one million dollars paid to any one employee during the year or (ii) to reduce a qualified employee leasing company's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757, when the taxpayer is the client-lessee of such company, to the extent such liability is attributable to the number of new employees performing services for such client-lessee at the qualified location or locations, excluding any wages in excess of one million dollars paid to any one employee during the year. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer or the qualified employee leasing company of the credit shall not change the amount that otherwise would be reported by the taxpayer, or such qualified employee leasing company, to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755. The amount of credits used against income tax withholding shall not exceed the withholding attributable to the number of new employees employed at the qualified location or locations or, for a qualified employee leasing company, the number of new employees performing services for the applicable client-lessee at the qualified location or locations, excluding any wages in excess of one million dollars paid to any one employee during the year. If the amount of credit used by the taxpayer or the qualified employee leasing company against income tax withholding exceeds such amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise

permitted in this section or shall carry over to the extent authorized in subdivision (1)(g) of this section.

(c) Credits may be used to obtain a refund of sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813 that are not subject to direct refund under section 77-6831 and that are paid on purchases, including rentals, for use at a qualified location.

(d) The credits provided in subsections (4) and (5) of section 77-6831 may be used to repay a loan for job training or infrastructure development as provided in section 77-6841.

(e) Credits may be used to obtain a payment from the state equal to the amount which the taxpayer demonstrates to the director was paid by the taxpayer after the date of the complete application for job training and talent recruitment of employees who qualify in the number of new employees, to the extent that proceeds from a loan described in section 77-6841 were not used to make such payments. For purposes of this subdivision:

(i) Job training means training for a prospective or new employee that is provided after the date of the complete application by a Nebraska nonprofit college or university, a Nebraska public or private secondary school, a Nebraska educational service unit, or a company that is not a member of the taxpayer's unitary group or a related person to the taxpayer; and

(ii) Talent recruitment means talent recruitment activities that result in a newly recruited employee who is hired by the taxpayer after the date of the complete application and who is paid compensation during the year of hire at a rate equal to at least one hundred percent of the Nebraska statewide average hourly wage for the year of application, including marketing, relocation expenses, and search-firm fees. Talent recruitment payments that may be reimbursed include, without limitation, payment by the taxpayer, without repayment by the employee, of an employee's student loans, an employee's tuition, and an employee's downpayment on a primary residence in Nebraska. Talent recruitment payments that may be reimbursed shall not include payments for the recruitment of a person who constitutes a related person to the taxpayer when the taxpayer is an individual or recruitment of a person who constitutes a related person to an owner of the taxpayer when the taxpayer is a partnership, a limited liability company, or a subchapter S corporation.

(f) The credits provided in subsections (4) and (5) of section 77-6831 may be used to obtain a payment from the state equal to the amount which the taxpayer demonstrates to the director was paid for taxpayer-sponsored child care at the qualified location or locations during the performance period and the carryover period.

(g) Credits may be carried over until fully utilized through the end of the carryover period.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the ImagiNE Nebraska Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Refund claims for materials purchased by a purchasing agent shall include:

(i) A copy of the purchasing agent appointment;

(ii) The contract price; and

(iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of section 77-6831, a certification by the contractor or repairperson of the percentage of the materials incorporated into or annexed to the qualified location on which sales and use taxes were paid to Nebraska after appointment as purchasing agent; or

(B) For refunds under subdivision (2)(a)(iv) of section 77-6831, a certification by the contractor or repairperson of the percentage of the contract price that represents the cost of materials annexed to the qualified location and the percentage of the materials annexed to the qualified location on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the ImagiNE Nebraska Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708. Refunds shall be paid by the Tax Commissioner within one hundred eighty days after receipt of the refund claim. Such payments shall be subject to later recovery by the Tax Commissioner upon audit.

(e) If a claim for a refund of sales and use taxes under the Local Option Revenue Act, the Qualified Judgment Payment Act, or sections 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is filed by June 15 of a given year, the refund shall be made on or after November 15 of the same year. If such a claim is filed on or after June 16 of a given year, the refund shall not be made until on or after November 15 of the following year. The Tax Commissioner shall notify the affected city, village, county, or municipal county of the amount of refund claims of sales and use taxes under the Local Option Revenue Act, the Qualified Judgment Payment Act, or sections 13-319, 13-324, and 13-2813 that are in excess of twenty-five thousand dollars on or before July 1 of the year before the claims will be paid under this section.

(f) For refunds of sales and use taxes under the Local Option Revenue Act, the deductions made by the Tax Commissioner for such refunds shall be delayed in accordance with section 77-27,144.

(g) Interest shall not be allowed on any taxes refunded under the ImagiNE Nebraska Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into or annexed at a qualified location and becomes the property of the owner of the improvement to real estate or the taxpayer. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the property.

(4) The determination of whether the application is complete, whether a location is a qualified location, and whether to approve the application and sign the agreement shall be made by the director. All other interpretations of the ImagiNE Nebraska Act shall be made by the Tax Commissioner. The Commissioner of Labor shall provide the director with such information as the

Department of Labor regularly receives with respect to the taxpayer which the director requests from the Commissioner of Labor in order to fulfill the director's duties under the act. The director shall use such information to achieve efficiency in the administration of the act.

(5) Once the director and the taxpayer have signed the agreement under section 77-6828, the taxpayer, and its owners or members where applicable, may report and claim and shall receive all incentives allowed by the ImagiNE Nebraska Act, subject to the base authority limitations provided in section 77-6839, without waiting for a determination by the director or the Tax Commissioner or other taxing authority that the taxpayer has met the required employment and investment levels or otherwise qualifies, has qualified, or continues to qualify for such incentives, provided that the tax return or claim has been signed by an owner, member, manager, or officer of the taxpayer who declares under penalties of perjury that he or she has examined the tax return or claim, including accompanying schedules and statements, and to the best of his or her knowledge and belief (a) the tax return or claim is correct and complete in all material respects, (b) payment of the claim has not been previously made by the state to the taxpayer, and (c) with respect to sales or use tax refund claims, the taxpayer has not claimed or received a refund of such tax from a retailer. The payment or allowance of such a claim shall not prevent the director or the Tax Commissioner or other taxing authority from recovering such payment, exemption, or allowance, within the normal period provided by law, subject to normal appeal rights of a taxpayer, if the director or Tax Commissioner or other taxing authority determines upon review or audit that the taxpayer did not qualify for such incentive or exemption.

(6) An audit of employment and investment thresholds and incentive amounts shall be made by the Tax Commissioner to the extent and in the manner determined by the Tax Commissioner. Upon request by the director or the Tax Commissioner, the Commissioner of Labor shall report to the director and the Tax Commissioner the employment data regularly reported to the Department of Labor relating to number of employees and wages paid for each taxpayer. The director and Tax Commissioner, to the extent they determine appropriate, shall use such information to achieve efficiency in the administration of the ImagiNE Nebraska Act. The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within three years from the date of refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later. The director shall not enter into an agreement with any taxpayer unless the taxpayer agrees to electronically verify the work eligibility status of all newly hired employees employed in Nebraska within ninety days after the date of hire. For purposes of calculating any tax incentive under the act, the hours worked and compensation paid to an employee who has not been electronically verified or who is not eligible to work in Nebraska shall be excluded.

(7) A determination by the director that a location is not a qualified location or a determination by the Tax Commissioner that a taxpayer has failed to meet or maintain the required levels of employment or investment for incentives, exemptions, or recapture, or does not otherwise qualify for incentives or exemptions, may be protested by the taxpayer to the Tax Commissioner within sixty days after the mailing to the taxpayer of the written notice of the proposed determination by the director or the Tax Commissioner, as applicable. If the

notice of proposed determination is not protested in writing by the taxpayer within the sixty-day period, the proposed determination is a final determination. If the notice is protested, the Tax Commissioner, after a formal hearing by the Tax Commissioner or by an independent hearing officer appointed by the Tax Commissioner, if requested by the taxpayer in such protest, shall issue a written order resolving such protest. The written order of the Tax Commissioner resolving a protest may be appealed to the district court of Lancaster County in accordance with the Administrative Procedure Act within thirty days after the issuance of the order.

Source: Laws 2020, LB1107, § 32; Laws 2022, LB1150, § 21.
Operative date April 20, 2022.

Cross References

Administrative Procedure Act, see section 84-920.
Employment and Investment Growth Act, see section 77-4101.
Local Option Revenue Act, see section 77-27,148.
Nebraska Advantage Act, see section 77-5701.
Nebraska Revenue Act of 1967, see section 77-2701.
Qualified Judgment Payment Act, see section 77-6401.

77-6833 Incentives; recapture or disallowance; conditions; procedure.

(1) If the taxpayer fails to maintain employment and investment levels at or above the levels required in the agreement for the entire performance period, all or a portion of the incentives set forth in the ImagiNE Nebraska Act shall be recaptured or disallowed. For purposes of this section, the average compensation and health coverage requirements of subdivision (1)(c) of section 77-6831 shall be treated as a required level of employment for each year of the performance period.

(2) In the case of a taxpayer who has failed to maintain the required levels of employment or investment for the entire performance period, any reduction in the personal property tax, any refunds in tax or exemptions from tax allowed under section 77-6831, and any refunds or reduction in tax allowed because of the use of a credit allowed under section 77-6831 shall be partially recaptured from either the taxpayer, the owner of the improvement to real estate, or the qualified employee leasing company, and any carryovers of credits shall be partially disallowed. The amount of the recapture for each benefit shall be a percentage equal to the number of years the taxpayer did not maintain the required levels of investment or employment divided by the number of years of the performance period multiplied by the refunds, exemptions, or reductions in tax allowed, reduction in personal property tax, credits used, and the remaining carryovers. In addition, the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain the qualified location or locations at or above the required levels of employment or investment.

(3) If the taxpayer receives any refund, exemption, or reduction in tax to which the taxpayer was not entitled or which was in excess of the amount to which the taxpayer was entitled, the refund, exemption, or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any amount recaptured under this subsection shall be excluded from the amounts subject to recapture under other subsections of this section.

(4) Any refunds, exemptions, or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be

immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(5)(a) Any personal property tax that would have been due except for the exemption allowed under the ImagiNE Nebraska Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted.

(b) All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(6) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the performance period or three calendar years after the benefit was allowed, whichever is later.

(7) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the ImagiNE Nebraska Act unless the recapture was in error.

(8) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or a national emergency.

Source: Laws 2020, LB1107, § 33.

77-6834 Incentives; transferable; when; effect.

(1) The incentives allowed under the ImagiNE Nebraska Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-6833. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, estate, or trust shall be liable for any repayment required by section 77-6833;

(b) The credit prescribed in subsection (4) of section 77-6831 may be transferred to a qualified employee leasing company from a taxpayer who is a client-lessee of the qualified employee leasing company with employees performing services at the qualified location or locations of the client-lessee. The credits transferred must be designated for a specific year and cannot be carried forward by the qualified employee leasing company. The credits may only be used by the qualified employee leasing company to offset the income tax withholding liability under section 77-2756 or 77-2757 for withholding for

employees performing services for the client-lessee at the qualified location or locations. The offset to such withholding liability must be computed in accordance with subdivision (1)(b) of section 77-6832 based on wages paid to the employees by the qualified employee leasing company, and not the amount paid to the qualified employee leasing company by the client-lessee; and

(c) The incentives previously allowed and the future allowance of incentives may be transferred when an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification to the director of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the ImagiNE Nebraska Act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer dies and there is a 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 the credit may be changed only after obtaining the permission of the director.

(5) The director may disclose information to the acquiring taxpayer about the agreement and prior benefits that is reasonably necessary to determine the future incentives and liabilities of the taxpayer.

Source: Laws 2020, LB1107, § 34.

77-6835 Refunds; interest not allowable.

Interest shall not be allowable on any refunds paid because of benefits earned under the ImagiNE Nebraska Act.

Source: Laws 2020, LB1107, § 35.

77-6836 Application; valid; when; director; Tax Commissioner; powers and duties.

(1) Any complete application shall be considered a valid application on the date submitted for the purposes of the ImagiNE Nebraska Act.

(2) The director shall be allowed access, by the Tax Commissioner, to information associated with the Nebraska Advantage Act, the Nebraska Advantage Rural Development Act, and the Employment and Investment Growth Act to meet the director's obligations under the ImagiNE Nebraska Act.

(3) The director may contract with the Tax Commissioner for services that the director determines are necessary to fulfill the director's responsibilities under the ImagiNE Nebraska Act, other than services which constitute the actual actions and decisions required to be taken or made by the director under the ImagiNE Nebraska Act.

(4) The Tax Commissioner shall develop and maintain an electronic application and reporting system to be used by the director and Tax Commissioner to administer the ImagiNE Nebraska Act.

Source: Laws 2020, LB1107, § 36.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Nebraska Advantage Act, see section 77-5701.
Nebraska Advantage Rural Development Act, see section 77-27,187.

77-6837 Reports; contents; joint hearing.

(1) Beginning in 2021, the director and the Tax Commissioner shall jointly submit electronically an annual report for the previous fiscal year to the Legislature no later than October 31 of each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Economic Development and the Department of Revenue shall together, on or before December 15 of each even-numbered year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) The report shall list (a) the agreements which have been signed during the previous year, (b) the agreements which are still in effect, (c) the identity of each taxpayer who is party to an agreement, and (d) the qualified location or locations.

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the ImagiNE Nebraska Act, (b) the refunds and reductions in tax allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the credits used against withholding liability, (g) the credits used for job training, (h) the credits used for infrastructure development, (i) the number of jobs created under the act, (j) the expansion of capital investment, (k) the estimated wage levels of jobs created under the act subsequent to the application date, (l) the total number of qualified applicants, (m) the projected future state revenue gains and losses, (n) the sales tax refunds owed, (o) the credits outstanding under the act, (p) the value of personal property exempted by class in each county under the act, (q) the total amount of the payments, (r) the amount of workforce training and infrastructure development loans issued, outstanding, repaid, and delinquent, and (s) the value of health coverage provided to employees at qualified locations during the year who are not base-year employees and who are paid the required compensation. The report shall include the estimate of the amount of sales and use tax refunds to be paid and tax credits to be used as were required for the October forecast under section 77-6839.

(4) In estimating the projected future state revenue gains and losses, the report shall detail the methodology utilized, state the economic multipliers and industry multipliers used to determine the amount of economic growth and positive tax revenue, describe the analysis used to determine the percentage of new jobs attributable to the ImagiNE Nebraska Act, and identify limitations that are inherent in the analysis method.

(5) The report shall provide an explanation of the audit and review processes of the Department of Economic Development and the Department of Revenue, as applicable, in approving and rejecting applications or the grant of incentives and in enforcing incentive recapture. The report shall also specify the median

period of time between the date of application and the date the agreement is executed for all agreements executed by June 30 of the current year.

(6) The report shall provide information on agreement-specific total incentives used every two years for each agreement. The report shall disclose (a) the identity of the taxpayer, (b) the qualified location or locations, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each agreement every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the director or Tax Commissioner, as applicable, but not necessarily received, during the previous two years.

(7) The report shall include an executive summary which shows aggregate information for all agreements for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for agreements detailed in subsection (6) of this section during the previous two years; (b) the number of agreements; (c) the new jobs at the qualified location or locations for which credits have been granted; (d) the average compensation paid to employees in the state in the year of application and for the new jobs at the qualified location or locations; and (e) the total investment for which incentives were granted. The executive summary shall summarize the number of states which grant investment tax credits, job tax credits, sales and use tax refunds for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

(8) No information shall be provided in the report or in supplemental information that is protected by state or federal confidentiality laws.

Source: Laws 2020, LB1107, § 37; Laws 2022, LB1150, § 22.
Operative date April 20, 2022.

77-6838 Rules and regulations.

Except as otherwise stated in the ImagiNE Nebraska Act, the director, with input from the Tax Commissioner, may adopt and promulgate all procedures and rules and regulations necessary to carry out the purposes of the ImagiNE Nebraska Act.

Source: Laws 2020, LB1107, § 38.

77-6839 Tax incentives; estimates required; when; exceed base authority; limit on applications.

(1) The Department of Economic Development and the Department of Revenue shall jointly, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales and use tax refunds to be paid and tax credits to be used under the ImagiNE Nebraska Act during the fiscal years to be forecast under section 77-27,158. The estimate shall be based on the most recent data available, including pending and approved applications and updates thereof as

are required by subdivision (1)(f) of section 77-6828. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27,158.

(2)(a) In addition to the estimates required under subsection (1) of this section, the Department of Economic Development shall, on or before the fifteenth day of October and February of every year, make an estimate of the amount of sales and use tax refunds to be paid and tax credits to be used under the ImagiNE Nebraska Act for each of the upcoming three calendar years and shall report such estimate to the Governor. The estimate shall be based on the most recent data available, including pending and approved applications and updates thereof as are required by subdivision (1)(f) of section 77-6828. If the estimate for any such calendar year exceeds the base authority:

(i) The Department of Economic Development shall prepare an analysis explaining why the estimate exceeds the base authority. The department shall include such analysis in the report it submits to the Governor under this subsection; and

(ii) The director shall not approve any additional applications under the ImagiNE Nebraska Act that would include refunds or credits in the calendar year in which the base authority is projected to be exceeded. Applications shall be considered in the order in which they are received. Any applications that are not approved because the base authority has been exceeded shall be placed on a wait list in the order in which they were received and shall be given first priority once applications may again be approved. Applications on the wait list retain the same application date and base year as if they had been approved within the time set forth in section 77-6827.

(b) For purposes of this section, base authority means the total amount of refunds and credits that may be approved in any calendar year. Notwithstanding any other provision of the ImagiNE Nebraska Act to the contrary, no refunds may be paid and no credits may be used in any calendar year in excess of the base authority for such calendar year. The base authority shall be equal to twenty-five million dollars for calendar years 2021 and 2022, one hundred million dollars for calendar years 2023 and 2024, and one hundred fifty million dollars for calendar year 2025. Beginning with calendar year 2026 and every three years thereafter, the director shall adjust the base authority to an amount equal to three percent of the actual General Fund net receipts for the most recent fiscal year for which such information is available. Any amount of base authority that is unused in a calendar year shall carry forward to the following calendar year and shall be added to the limit applicable to such following calendar year, except that in no case shall the base authority for any calendar year prior to 2026 exceed four hundred million dollars.

Source: Laws 2020, LB1107, § 39; Laws 2022, LB1150, § 23.
Operative date April 20, 2022.

77-6840 Employment and wage data information; Department of Labor; duty.

The Department of Labor shall, as requested, provide to the director and the Tax Commissioner the employment and wage data information necessary to meet the responsibilities of the director and Tax Commissioner under the

ImagiNE Nebraska Act, to the extent the Department of Labor collects such information.

Source: Laws 2020, LB1107, § 40.

77-6841 Workforce training and infrastructure development; revolving loan program; legislative findings; Department of Economic Development; duties; ImagiNE Nebraska Revolving Loan Fund; created; use; investment.

(1) The Legislature finds that providing job training is critical to the public purpose of attracting and retaining businesses and that the growth of high-paying jobs in Nebraska is limited by an unmet need for workforce training and infrastructure development. The Legislature further finds that many communities in Nebraska lack the infrastructure, including broadband access, necessary to provide high-paying jobs for residents. The Legislature further finds that workforce training and infrastructure development help businesses and improve the quality of life for workers and communities in Nebraska. Because there is a statewide benefit from workforce training and infrastructure development, the Legislature intends to provide a revolving loan program as a rational means to address these needs.

(2) The Department of Economic Development shall establish and administer a revolving loan program for workforce training and infrastructure development expenses to be incurred by applicants for incentives under the ImagiNE Nebraska Act.

(3) The ImagiNE Nebraska Revolving Loan Fund is hereby created. The fund shall receive money from appropriations from the Legislature, grants, private contributions, repayment of loans, and all other sources. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. It is the intent of the Legislature to transfer five million dollars from the General Fund to the ImagiNE Nebraska Revolving Loan Fund for fiscal years 2022-23 and 2023-24 for purposes of carrying out the workforce training and infrastructure development revolving loan program pursuant to the ImagiNE Nebraska Act. It is the intent of the Legislature to appropriate five million dollars for fiscal years 2022-23 and 2023-24 for purposes of carrying out the workforce training and infrastructure development revolving loan program pursuant to the ImagiNE Nebraska Act.

(4) The Department of Economic Development, as part of its comprehensive business development strategy, shall administer the ImagiNE Nebraska Revolving Loan Fund and may loan funds to applicants under the ImagiNE Nebraska Act to secure new, high-paying jobs in Nebraska based on the criteria established in sections 77-6842 and 77-6843. Loans made to applicants under the ImagiNE Nebraska Act and interest on such loans may be repaid using credits earned under the ImagiNE Nebraska Act. If that occurs, the Department of Revenue shall certify the credit usage to the State Treasurer, who shall, within thirty days, transfer the amount of the credit used from the General Fund to the ImagiNE Nebraska Revolving Loan Fund.

(5) If a taxpayer with an agreement under the ImagiNE Nebraska Act obtains a loan under this section and fails to attain the required minimum number of new employees, minimum compensation, and minimum required cumulative investment necessary for that taxpayer to earn a credit, the principal and

interest of the loan shall be considered an underpayment of tax and may be recovered by the Department of Revenue.

(6) Whether repaid using credits or repaid directly by the recipient of the loan, loans made from the ImagiNE Nebraska Revolving Loan Fund shall be repaid with interest at the rate established in section 45-102.

Source: Laws 2020, LB1107, § 41.

Cross References

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

77-6842 Workforce training loan; application; partnering entities; loan approval; factors considered.

(1) A taxpayer with an application under the ImagiNE Nebraska Act may apply for a workforce training loan by submitting an application to the Department of Economic Development which includes, but is not limited to:

(a) The number of jobs to be created that will require training or the number of existing positions that will be trained;

(b) The nature of the business and the type of jobs to be created that will require training or positions to be trained;

(c) The estimated wage levels of the jobs to be created or positions to be trained; and

(d) A program schedule for the workforce training project.

(2) A taxpayer may partner with a postsecondary educational institution in Nebraska, a private, nonprofit educational organization in Nebraska holding a certificate of exemption under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, a Nebraska educational service unit, or a school district in Nebraska to assist in providing the workforce training. The application shall specify the role of the partnering entity in identifying and training potential job applicants for the applicant business.

(3) The director shall determine whether to approve the taxpayer's application for a workforce training loan under the ImagiNE Nebraska Act based upon the director's determination as to whether the loan will help enable the state to accomplish the purposes stated in section 77-6841. The director shall be governed by and shall take into consideration all of the following factors in making such determination:

(a) The department's comprehensive business development strategy;

(b) The necessity of the loan to assure that the applicant will expand employment in Nebraska;

(c) The number of jobs to be created; and

(d) The expected pay of the jobs to be created.

Source: Laws 2020, LB1107, § 42.

77-6843 Infrastructure development loan; application; approval; factors considered.

(1) A taxpayer with an application under the ImagiNE Nebraska Act may apply for an infrastructure development loan by submitting an application to the Department of Economic Development which includes, but is not limited to:

(a) The nature of the business and the type and number of jobs to be created or retained;

(b) The estimated wage levels of the jobs to be created or retained; and

(c) A brief description of the infrastructure need that the loan is intended to fill.

(2) The director shall determine whether to approve the taxpayer's application for an infrastructure development loan under the ImagiNE Nebraska Act based upon the director's determination as to whether the loan will help enable the state to accomplish the purposes stated in section 77-6841. The director shall be governed by and shall take into consideration all of the following factors in making such determination:

(a) The department's comprehensive business development strategy;

(b) The necessity of the loan to assure that the applicant will expand employment in Nebraska;

(c) The number of jobs to be created; and

(d) The expected pay of the jobs to be created.

Source: Laws 2020, LB1107, § 43.

ARTICLE 69
URBAN REDEVELOPMENT ACT

Section

77-6901 Act, how cited.

Sections 77-6901 to 77-6928 shall be known and may be cited as the Urban Redevelopment Act.

Source: Laws 2021, LB544, § 1.

77-6902 Definitions, where found.

For purposes of the Urban Redevelopment Act, the definitions found in sections 77-6903 to 77-6918 shall be used.

Source: Laws 2021, LB544, § 2.

77-6903 Additional definitions.

Any term has the same meaning as used in the Nebraska Revenue Act of 1967.

Source: Laws 2021, LB544, § 3.

77-6904 Base year, defined.

Base year means the year immediately preceding the year of application, except that if the year of application is 2021, the base year is either 2019 or 2020, whichever year the applicant had the larger number of equivalent employees at the qualified location.

Source: Laws 2021, LB544, § 4.

77-6905 Base-year employee, defined.

Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer or its predecessors during the base year and who is employed at the qualified location.

Source: Laws 2021, LB544, § 5.

77-6906 Economic redevelopment area, defined.

Economic redevelopment area means an area in the State of Nebraska in which:

(1) The average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate by the United States Bureau of the Census is at least one hundred fifty percent of the average rate of unemployment in the state during the same period; and

(2) The average poverty rate in the area is twenty percent or more for the federal census tract in the area.

Source: Laws 2021, LB544, § 6.

77-6907 Equivalent employees, defined.

Equivalent employees means the number of employees computed by dividing the total hours paid in a year to employees by the product of forty times the number of weeks in a year. Only the hours paid to employees who are residents of this state shall be included in such computation. A salaried employee who receives a predetermined amount of compensation each pay period on a weekly or less frequent basis is deemed to have been paid for forty hours per week during the pay period.

Source: Laws 2021, LB544, § 7.

77-6908 Investment, defined.

Investment means the value of qualified property incorporated into or used at the qualified location. For qualified property owned by the taxpayer, the value shall be the original cost of the property. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation. For purposes of this section, original cost means the amount required to be capitalized for depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended. Any amount, including the labor of the taxpayer, that is capitalized as a part of the cost of the qualified property or that is written off under section 179 of the Internal Revenue Code of 1986, as amended, shall be considered part of the original cost.

Source: Laws 2021, LB544, § 8.

77-6909 Nebraska statewide average hourly wage for any year, defined.

Nebraska statewide average hourly wage for any year means the most recent statewide average hourly wage paid by all employers in all counties in Nebraska as calculated by the Office of Labor Market Information of the Department of Labor using annual data from the Quarterly Census of Employment and Wages by October 1 of the year prior to application. Hourly wages shall be calculated by dividing the reported average annual weekly wage by forty.

Source: Laws 2021, LB544, § 9.

77-6910 Number of new employees, defined.

Number of new employees means the number of equivalent employees that are employed at the qualified location during a year that are in excess of the number of base-year employees.

Source: Laws 2021, LB544, § 10.

77-6911 Performance period, defined.

Performance period means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the third year after the year the required increases were met or exceeded.

Source: Laws 2021, LB544, § 11.

77-6912 Qualified location, defined.

Qualified location means any location in a city of the metropolitan class or a city of the primary class that is used or will be used by the taxpayer to conduct business activities and that is located within an economic redevelopment area. More than one qualified location may be part of the same agreement.

Source: Laws 2021, LB544, § 12; Laws 2022, LB1261, § 17.
Operative date July 21, 2022.

77-6913 Qualified property, defined.

Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986,

as amended, or the components of such property, that will be located and used at the qualified location. Qualified property does not include (1) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (2) property that is rented by the taxpayer qualifying under the Urban Redevelopment Act to another person.

Source: Laws 2021, LB544, § 13.

77-6914 Ramp-up period, defined.

Ramp-up period means two years from the date the complete application was filed with the Director of Economic Development.

Source: Laws 2021, LB544, § 14.

77-6915 Related taxpayers, defined.

Related taxpayers shall include any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967 but are not part of the same corporate taxpayer, any business entities that are not corporations but which would be a part of the unitary business if they were corporations, and any business entities if at least fifty percent of such entities are owned by the same persons or related taxpayers and family members as defined in the ownership attribution rules of the Internal Revenue Code of 1986, as amended.

Source: Laws 2021, LB544, § 15.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-6916 Taxpayer, defined.

Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any entity that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes and such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended. For purposes of this section, political subdivision includes any public corporation created for the benefit of a political subdivision and any group of political subdivisions forming a joint public agency, organized by interlocal agreement, or utilizing any other method of joint action.

Source: Laws 2021, LB544, § 16.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-6917 Wages, defined.

Wages means the wages and other payments subject to the federal medicare tax.

Source: Laws 2021, LB544, § 17.

77-6918 Year, defined.

Year means the taxable year of the taxpayer.

Source: Laws 2021, LB544, § 18.

77-6919 Incentives; application; contents; fee; approval; conditions; agreement; confidentiality; limitation on new applications.

(1) To earn the incentives set forth in the Urban Redevelopment Act, the taxpayer shall file an application for an agreement with the Director of Economic Development.

(2) The application shall:

(a) Identify the taxpayer applying for incentives;

(b) Identify the location or locations where the new investment and employment will occur, including documentation to show that each such location is a qualified location;

(c) State the estimated, projected amount of new investment and the estimated, projected number of new equivalent employees; and

(d) Include an application fee of five hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund.

(3) Subject to the limit in subsection (4) of this section, the director shall approve the application and authorize the total amount of incentives expected to be earned if he or she is satisfied that the qualified location or locations meet the requirements established in section 77-6920 and such requirements will be reached within the required time period.

(4) The director shall not approve further applications once the expected incentives from the approved projects total eight million dollars. All but one hundred dollars of the application fee shall be refunded to the applicant if the application is not approved for any reason.

(5) Applications for incentives shall be considered in the order in which they are received.

(6) The director has ninety days to approve a complete application.

(7) After approval, the taxpayer and the director shall enter into a written agreement. As part of such agreement, the taxpayer shall agree to increase the levels of employment and investment required by the act and the director, on behalf of the State of Nebraska, shall, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Urban Redevelopment Act up to the total amount that were authorized by the director at the time of approval. The application and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) The maximum amount of incentives authorized.

(8) The application, the agreement, all supporting information, and all other information reported to the Director of Economic Development shall be kept confidential by the director, except for the name of the taxpayer, the location of the project, the estimated amounts of increased employment and investment stated in the application, the date of the complete application, the date the

agreement was signed, and the information required to be reported by section 77-6928. The application, the agreement, and all supporting information shall be provided by the director to the Department of Revenue. The director shall disclose, to any municipalities in which project locations exist, the approval of an application and the execution of an agreement under this section. The Tax Commissioner shall also notify each municipality of the amount and taxpayer identity for each refund of local option sales and use taxes of the municipality within thirty days after the refund is allowed or approved. Disclosures shall be kept confidential by the municipality unless publicly disclosed previously by the taxpayer or by the State of Nebraska.

(9) There shall be no new applications for incentives filed under this section after December 31, 2031.

Source: Laws 2021, LB544, § 19; Laws 2022, LB1261, § 18.
Operative date July 21, 2022.

77-6920 Tax credits; conditions; amounts; teleworker; treatment.

(1) A tax credit shall be allowed to any taxpayer who has an approved application pursuant to the Urban Redevelopment Act if the taxpayer:

(a) Attains a cumulative investment in qualified property of at least one hundred fifty thousand dollars and hires at least five new employees at the qualified location or locations before the end of the ramp-up period; and

(b) Pays a minimum qualifying wage of seventy percent of the Nebraska statewide average hourly wage to the new equivalent employees for whom tax incentives are sought under the Urban Redevelopment Act.

(2) A tax credit shall be allowed to any taxpayer who has an approved application pursuant to the Urban Redevelopment Act if the taxpayer attains a cumulative investment in qualified property of at least fifty thousand dollars at the qualified location or locations before the end of the ramp-up period.

(3) Subject to subsection (5) of this section, the amount of the credit allowed under subsection (1) of this section shall be:

(a) Three thousand dollars for each new equivalent employee, except that such amount shall be increased by one thousand dollars for each equivalent employee who lives in an economic redevelopment area; and

(b) Two thousand seven hundred fifty dollars for each fifty thousand dollars of increased investment.

(4) Subject to subsection (5) of this section, the amount of the credit allowed under subsection (2) of this section shall be five percent of the investment.

(5) A taxpayer may qualify for a credit under either subsection (1) or (2) of this section, but cannot qualify for a credit under both such subsections. The credit shall not exceed fifty thousand dollars. The taxpayer shall receive such credit for each year of the performance period that the taxpayer is at or above the required levels of employment and cumulative investment.

(6) A taxpayer shall not qualify for any credits under the Urban Redevelopment Act if the taxpayer is receiving any benefits under any other tax incentive program offered by the State of Nebraska.

(7) A teleworker working from his or her residence shall not be considered an equivalent employee of the taxpayer for purposes of the Urban Redevelopment

Act unless the teleworker's residence is located in the economic redevelopment area in which the taxpayer's qualified location is located.

Source: Laws 2021, LB544, § 20; Laws 2022, LB1261, § 19.
Operative date July 21, 2022.

77-6921 Existing business acquisition, disposal, reorganization, or relocation; computation; certain transactions excluded.

(1)(a) If the taxpayer acquires an existing business, the increases in investment and employment shall be computed as though the taxpayer had owned the business for the entire taxable year preceding the date of application.

(b) If the taxpayer disposes of an existing business and the new owner maintains the minimum increases in investment and employment required to create incentives, the taxpayer shall not be required to make any repayment under section 77-6923 solely because of the disposition of the business.

(2) If the structure of a business is reorganized, the taxpayer shall compute the increases on a consistent basis for all periods.

(3) If the taxpayer moves a business from one qualified location to another qualified location and the business was operated in a qualified location during the taxable year preceding the date of application, the increases in investment and employment shall be computed as though the taxpayer had operated the business at the new location for the entire taxable year preceding the date of application.

(4) If the taxpayer enters into any of the following transactions, the transaction shall be presumed to be a transaction entered into for the purpose of generating benefits under the Urban Redevelopment Act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement except as specifically provided in this subsection:

(a) The purchase or lease of any property that was previously owned by the taxpayer who filed the application or a related taxpayer unless the first purchase by either the taxpayer who filed the application or a related taxpayer was first placed in service at a qualified location after the beginning of the taxable year the application was filed;

(b) The renegotiation of any lease in existence during the taxable year the application was filed which does not materially change any of the terms of the lease other than the expiration date;

(c) The purchase or lease of any property from a related taxpayer, except that the taxpayer who filed the application will be allowed any benefits under the act to which the related taxpayer would have been entitled on the purchase or lease of the property if the related taxpayer was considered the taxpayer; and

(d) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state.

Source: Laws 2021, LB544, § 21.

77-6922 Tax credits; use.

(1) The credits allowed under section 77-6920 may be used:

(a) To obtain a refund of sales and use taxes paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813;

(b) As a refundable income tax credit claimed on an income tax return of the taxpayer. The return need not reflect any income tax liability owed by the taxpayer;

(c) To reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer of the credit shall not change the amount that otherwise would be reported by the taxpayer to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755. The amount of credits used against income tax withholding shall not exceed the withholding attributable to the number of new equivalent employees employed by the taxpayer. If the amount of credit used by the taxpayer against income tax withholding exceeds such amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section; and

(d) To obtain a payment from the state equal to the real property taxes due after the year the required levels of employment and investment were met, for real property at a qualified location that is acquired by the taxpayer after the date the application was filed. The payment from the state shall be made only after payment of the real property taxes have been made to the county as required by law. Payments shall not be allowed for any taxes paid on real property for which the taxes are divided under section 18-2147 or 58-507.

(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) Once the taxpayer attains the required levels of employment and investment, the taxpayer shall be entitled to a refund of all sales and use taxes paid, either directly or indirectly, under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813 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 with a purchasing agent agreement on building materials annexed to an improvement to real estate built for the taxpayer. The contractor shall certify to the taxpayer the amount of the sales and use taxes paid on the building materials, or the taxpayer, with the permission of the Director of Economic Development and a certification from the contractor that sales and use taxes were paid on all building materials, may presume that fifty percent of the cost of the improvement was for building materials annexed to real estate on which the tax was paid.

(5) Credits distributed to a partner, limited liability company member, shareholder, or beneficiary under section 77-6925 may be used against the

income tax liability of the partner, member, shareholder, or beneficiary receiving the credits.

Source: Laws 2021, LB544, § 22.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.
Qualified Judgment Payment Act, see section 77-6401.

77-6923 Tax credits; recapture; amount; deadline.

(1) If the taxpayer fails to maintain employment and investment levels at or above the levels required in the agreement for the entire performance period, any refunds or reduction in tax allowed under the Urban Redevelopment Act shall be partially recaptured from the taxpayer. The amount of the recapture for each incentive shall be a percentage equal to the number of years the taxpayer did not maintain the required levels of investment or employment divided by the number of years of the performance period, with such percentage then multiplied by the refunds or reductions in tax allowed.

(2) Any refund or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax incentives were received in more than one year, the incentives received in the most recent year shall be recovered first and then the incentives received in earlier years up to the extent of the required recapture.

(3) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the performance period or three calendar years after the incentive was allowed, whichever is later.

(4) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or a national emergency.

Source: Laws 2021, LB544, § 23.

77-6924 Employees; verification of status required; exclusions.

(1) The Director of Economic Development shall not approve or grant to any person any tax incentive under the Urban Redevelopment Act unless the taxpayer provides evidence satisfactory to the director that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

(2) For purposes of calculating any tax incentive available under the act, the director shall exclude hours worked and compensation paid to an employee that is not eligible to work in Nebraska as verified under subsection (1) of this section.

Source: Laws 2021, LB544, § 24.

77-6925 Incentives; transfer; when.

The incentives allowed under the Urban Redevelopment 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, a cooperative, including a cooperative exempt under

section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, limited liability company members, shareholders, patrons, limited cooperative association members, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, limited cooperative association, estate, or trust shall be liable for any repayment under section 77-6923;

(2) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended. The acquiring taxpayer, as of the date of notification of the Director of Economic Development of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act. The acquiring taxpayer shall be liable for any repayment that becomes due after the date of the transfer with respect to any benefits received either before or after the transfer; and

(3) If a taxpayer allowed a credit under section 77-6920 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 with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the director.

Source: Laws 2021, LB544, § 25.

77-6926 Refunds; interest not allowable.

Interest shall not be allowable on any refunds paid because of benefits earned under the Urban Redevelopment Act.

Source: Laws 2021, LB544, § 26.

77-6927 Base-year employment levels; review and certification; effect.

(1) The taxpayer may request the Tax Commissioner to review and certify the taxpayer's base-year employment levels. Upon a request for such review, the Tax Commissioner shall be given access to the employment and business records of the taxpayer and must complete the review within ninety days after the request. If the Tax Commissioner requests, by mail or by electronic means, additional information or clarification from the taxpayer in order to make his or her determination, the ninety-day period shall be tolled from the time the Tax Commissioner makes the request to the time he or she receives the requested information or clarification from the taxpayer. The taxpayer and the Tax Commissioner may also agree to extend the ninety-day period. If the Tax Commissioner fails to make his or her determination within the prescribed ninety-day period, the certification is deemed approved.

(2) Upon review, the Tax Commissioner may approve or amend the taxpayer's base-year employment levels based upon the employment and business records provided by the taxpayer. Once the Tax Commissioner certifies the employment levels, the certification is binding on the Department of Revenue when the taxpayer claims benefits on a return to the extent the information provided by the taxpayer was accurate and to the extent such information is not affected by any of the situations described in section 77-6921.

(3) If the taxpayer does not request review and certification of employment levels under this section, such levels are subject to later audit by the Department of Revenue.

Source: Laws 2021, LB544, § 27.

77-6928 Reports.

(1) On or before July 15, 2024, and on or before July 15 of each year thereafter, the Director of Economic Development shall prepare a report that includes:

(a) The total amount of investment at qualified locations in the previous calendar year by taxpayers who are receiving incentives pursuant to the Urban Redevelopment Act;

(b) The total number of equivalent employees added in the previous calendar year by taxpayers who are receiving incentives pursuant to the act; and

(c) The total amount of credits claimed and refunds approved in the previous calendar year under the act.

(2) The report shall also provide information on project-specific total incentives used every two years for each approved project, including (a) the identity of the taxpayer, (b) the qualified location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years and shall include information on two years of credits used and refunds approved. The incentives used shall include incentives that have been approved by the Director of Economic Development, but not necessarily received, during the previous two calendar years.

(3) On or before September 1, 2024, and on or before September 1 of each year thereafter, the Department of Economic Development shall present the report electronically to the Appropriations Committee of the Legislature. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2021, LB544, § 28.

ARTICLE 70

NEBRASKA HIGHER BLEND TAX CREDIT ACT

Section

77-7001 Act, how cited.

Sections 77-7001 to 77-7008 shall be known and may be cited as the Nebraska Higher Blend Tax Credit Act.

Source: Laws 2022, LB1261, § 1.
Operative date July 21, 2022.

77-7002 Terms, defined.

For purposes of the Nebraska Higher Blend Tax Credit Act:

(1) Department means the Department of Revenue;

(2) E-15 means ethanol blended gasoline formulated with a percentage of fifteen percent by volume of ethanol;

(3) E-25 means ethanol blended gasoline formulated with a percentage of twenty-five percent by volume of ethanol;

(4) E-30 means ethanol blended gasoline formulated with a percentage of thirty percent by volume of ethanol;

(5) E-85 means ethanol blended gasoline formulated with a percentage of fifty-one percent to eighty-three percent by volume of ethanol;

(6) Motor fuel pump means a meter or similar commercial weighing and measuring device used to measure and dispense motor fuel originating from a motor fuel storage tank;

(7) Retail dealer means a person engaged in the business of storing and dispensing motor fuel from a motor fuel pump for sale on a retail basis;

(8) Retail motor fuel site means a geographic location in this state where a retail dealer sells and dispenses motor fuel from a motor fuel pump on a retail basis; and

(9) Taxpayer means any natural person or any limited liability company, partnership, private domestic or private foreign corporation, or domestic or foreign nonprofit corporation certified pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Source: Laws 2022, LB1261, § 2.
Operative date July 21, 2022.

77-7003 Tax credit; eligibility; amount; use; application.

(1) Any taxpayer who is a retail dealer and who sold and dispensed E-15 or higher blend on a retail basis during the prior calendar year through a motor fuel pump located at the taxpayer's retail motor fuel site shall be eligible to receive tax credits under the Nebraska Higher Blend Tax Credit Act.

(2) The tax credit shall be in an amount equal to (a) five cents multiplied by the total number of gallons of E-15 sold by the taxpayer on a retail basis during the prior calendar year through a motor fuel pump located at the taxpayer's retail motor fuel site and (b) eight cents multiplied by the total number of gallons of E-25 or higher blend sold by the taxpayer on a retail basis during the prior calendar year through a motor fuel pump located at the taxpayer's retail motor fuel site.

(3) The tax credit shall be a refundable credit that may be used against any income tax imposed by the Nebraska Revenue Act of 1967 or any tax imposed pursuant to sections 77-907 to 77-918 or 77-3801 to 77-3807.

(4) Tax credits allowed under this section may be claimed for taxable years beginning or deemed to begin on or after January 1, 2022, under the Internal Revenue Code of 1986, as amended.

(5) To receive tax credits, a taxpayer shall submit an application to the department on a form prescribed by the department. The application shall include the following information:

(a) The name and address of the taxpayer;

(b) The total number of gallons of E-15 sold by the taxpayer on a retail basis during the prior calendar year through a motor fuel pump located at the taxpayer's retail motor fuel site;

(c) The total number of gallons of E-25 sold by the taxpayer on a retail basis during the prior calendar year through a motor fuel pump located at the taxpayer's retail motor fuel site;

(d) The total number of gallons of E-30 sold by the taxpayer on a retail basis during the prior calendar year through a motor fuel pump located at the taxpayer's retail motor fuel site;

(e) The total number of gallons of E-85 sold by the taxpayer on a retail basis during the prior calendar year through a motor fuel pump located at the taxpayer's retail motor fuel site; and

(f) Any other documentation required by the department.

Source: Laws 2022, LB1261, § 3.
Operative date July 21, 2022.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-7004 Tax credit; application; approval; limitation; department; duties.

(1) If the department determines that an application is complete and that the taxpayer qualifies for tax credits, the department shall approve the application within the limits set forth in this section and shall certify the amount of tax credits approved to the taxpayer.

(2) The department shall consider applications in the order in which they are received and may approve tax credits until the annual limit for the calendar year has been reached. For calendar year 2022, the annual limit on tax credits shall be two million dollars. For calendar year 2023 and each calendar year thereafter, the annual limit on tax credits shall be calculated by taking the annual limit from the prior calendar year and then multiplying such amount by (a) two hundred percent if the amount of tax credits approved in the prior calendar year exceeded ninety percent of the annual limit applicable to that calendar year or (b) one hundred percent if the amount of tax credits approved in the prior calendar year did not exceed ninety percent of the annual limit applicable to that calendar year. In no case shall the annual limit on tax credits exceed four million dollars.

Source: Laws 2022, LB1261, § 4.
Operative date July 21, 2022.

77-7005 Tax credit; how claimed; excess; how treated.

(1) A taxpayer shall claim the tax credit by attaching the tax credit certification received from the department under section 77-7004 to the taxpayer's tax return.

(2) Any credit in excess of the taxpayer's tax liability shall be refunded to the taxpayer. In lieu of claiming a refund, the taxpayer may elect to have the excess carried forward to subsequent taxable years. A taxpayer may carry forward the excess tax credits until fully utilized.

Source: Laws 2022, LB1261, § 5.
Operative date July 21, 2022.

77-7006 Tax credit; distribution.

Any tax credit allowable to a partnership, a limited liability company, a subchapter S corporation, or an estate or trust may be distributed to the partners, limited liability company members, shareholders, or beneficiaries in the same manner as income is distributed.

Source: Laws 2022, LB1261, § 6.
Operative date July 21, 2022.

77-7007 Limitation on new applications.

There shall be no new applications filed under the Nebraska Higher Blend Tax Credit Act after December 31, 2026. All applications and all tax credits pending or approved before such date shall continue in full force and effect.

Source: Laws 2022, LB1261, § 7.
Operative date July 21, 2022.

77-7008 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Nebraska Higher Blend Tax Credit Act.

Source: Laws 2022, LB1261, § 8.
Operative date July 21, 2022.